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FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:30 a.m. June 22, 2010

City Council Chambers
455 North Main

OPENING OF REGULAR MEETING

- Call to Order
- Approve the minutes of the regular meeting on June 15, 2010

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

V. CONSENT PLANNING AGENDA

1. *SUB2010-00004 - Plat of Terradyne West 3rd Addition located north of Central and on the west side of 159th Street East. (District II)

RECOMMENDED ACTION: Approve the plat and authorize the necessary signatures.

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Summer Jackson, Housing Member is also seated with the City Council.

VII. CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

IX. CONSENT AIRPORT AGENDA

None

COUNCIL AGENDA

X. COUNCIL MEMBER AGENDA

None

XI. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.

XII. CONSENT AGENDA (ITEMS 1 THROUG 15A)

1. Report of Board of Bids and Contracts dated June 21, 2010.

RECOMMENDED ACTION: Receive and file report; approve Contracts;
authorize necessary signatures.

2. Applications for Licenses to Retail Cereal Malt Beverages:

<u>Renewal</u>	<u>2010</u>	<u>(Consumption off Premises)</u>
William Gipson	Jasmine's One Stop	403 South Hydraulic
Cari Spainhour	Quik Trip #313	3164 South Hillside
Cari Spainhour	Quik Trip #320	1021 West 31st Street South
Cari Spainhour	Quik Trip #321	6011 West Central
Cari Spainhour	Quik Trip #325	1414 North Oliver
Cari Spainhour	Quik Trip #326	2010 South Broadway
Cari Spainhour	Quik Trip #328	2801 South Hydraulic
Cari Spainhour	Quik Trip #329	5602 East Harry
Cari Spainhour	Quik Trip #343	242 South Tyler
Cari Spainhour	Quik Trip #345	4020 South Meridian
Cari Spainhour	Quik Trip #347	1532 South Seneca
Cari Spainhour	Quik Trip #349	1112 West Douglas

(Item XII-2 Continued)

Cari Spainhour	Quik Trip #353	110 South Rock Road
Cari Spainhour	Quik Trip #356	4808 South Hydraulic
Cari Spainhour	Quik Trip #358	7120 West 21st Street North
Cari Spainhour	Quik Trip #360	3933 West 13th Street
Cari Spainhour	Quik Trip #366	1620 South Webb Road
Cari Spainhour	Quik Trip #368	626 West 21st Street North
Cari Spainhour	Quik Trip #369	3216 East Harry
Cari Spainhour	Quik Trip #372	3126 East Pawnee
Cari Spainhour	Quik Trip #373	1610 East Lincoln
Cari Spainhour	Quik Trip #374	10315 West 13th Street
Cari Spainhour	Quik Trip #376	2106 South Rock Road
Cari Spainhour	Quik Trip #378	5611 South Broadway
Cari Spainhour	Quik Trip #383	11223 East Central
Cari Spainhour	Quik Trip #384	2510 West Pawnee
Cari Spainhour	Quik Trip #386	1010 East Douglas Avenue
Cari Spainhour	Quik Trip #388	7991 East 37th Street North
Cari Spainhour	Quik Trip #389	4730 East Central
Cari Spainhour	Quik Trip #391	730 North Broadway

<u>New</u>	<u>2010</u>	<u>(Consumption on Premises)</u>
Harmit Singh	*Mauj Masti, Inc./Maharaja Cuisine of India*	3008 West Central Avenue^^

* General/Restaurant 50% or more gross revenue from sale of food.

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

3. Preliminary Estimates:

- a. Preliminary Estimates. (See Attached)

RECOMMENDED ACTION: Receive and file.

4. Petitions for Public Improvements:

- a. Street Paving in Cedar View Village Addition, east of Greenwich, south of Kellogg. (District II)

RECOMMENDED ACTION: Approve Petitions; adopt resolutions.

5. Consideration of Street Closures/Uses.

- Community Events - Celebrate 2010. (District IV)
- Community Events – Automobilia’s Moonlight Car Show and Street Party. (District VI)
- Community Event-Intrust Bank Arena (Eagles). (District I)

RECOMMENDED ACTION: Approve street closure.

6. Agreements/Contracts:

- a. Heartland Defense Training Center Mitigation Agreement. (District I)
- b. Class I Air Emission Source Operating Permit and Mandatory Greenhouse Gases Annual Reporting Requirements for Brooks Landfill-Camp Dresser and McKee Inc. (District VI)
- c. Technical Services for Energy Efficiency Community Block Grant (EECBG).
- d. KDHE Watershed Restoration and Protection Strategy (WRAPS) Grant Application.
- e. Renewal of Contract-Kansas Department of Agriculture Food Service Establishment Inspection and Regulatory Services Contract.
- f. Westar Construction Agreement and Agreement for Electric Services (All Districts)

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

7. Change Orders:

- a. Change Order No.9: Washington at Waterman Intersection Improvement. (District I)
- b. Change Order: 2009 Contract Street Maintenance Project. (District VI)

RECOMMENDED ACTION: Approve the Change Orders and authorize the necessary signatures.

8. Minutes of Advisory Boards/Commissions

Police and Fire Retirement System, April 21, 2010
Wichita Employees' Retirement System, April 21, 2010
Airport Advisory Board, May 3, 2010
Board of Code Standards and Appeals, May 3, 2010

RECOMMENDED ACTION: Receive and file.

9. Report on Claims for May 2010. (See Attached)

RECOMMENDED ACTION: Receive and file.

10. Settlement of Lawsuit.

RECOMMENDED ACTION: Authorize payment of \$25,000 as a full settlement of all possible claims which were made or could have been made in the claim.

11. Acceptance of State Historic Preservation Grant to conduct South Central Neighborhood Building Survey.
(District I)

RECOMMENDED ACTION: Accept the grant award and authorize the City Manager to sign the agreement.

12. Payment for Sedgwick County Lab Renovations.

RECOMMENDED ACTION: Approve the payment of \$125,000 to Sedgwick County and authorize the necessary budget adjustments.

13. Intelligent Transportation Systems-Network Switches.

RECOMMENDED ACTION: Designate Kyland-USA, LLC, as the sole source for the Kyland SICOM 3170 switch and authorize the payment in the amount of \$539,550.

14. General Obligation Bond and Note Sale.

RECOMMENDED ACTION: Adopt the resolution: 1) authorizing the general obligation bond and note sales; 2) approving the distribution to prospective bidders of the Preliminary Official Statement, subject to such minor revisions as may be determined necessary by the Director of Finance and Bond Counsel; 3) finding that such Preliminary Official Statement is in a form "deemed final" for the purpose of the Securities Exchange Commission's Rule 15c2-12(b)(1), subject to revision, amendment and completion in the final Official Statement; and, 4) authorizing publication of the Notice of Sale.

15. Second Reading Ordinances: (First Read June 15, 2010)

a. Second Reading Ordinances (See Attached)

RECOMMENDED ACTION: Adopt the Ordinances.

Adjournment

Workshop to follow

**City of Wichita
City Council Meeting
June 22, 2010**

TO: Mayor and City Council

SUBJECT: SUB2010-00004 -- Plat of Terradyne West 3rd Addition located north of Central and on the west side of 159th Street East. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (12-0)

Background: This site, consisting of 10 lots on 2.61 acres, is a replat of part of Terradyne West Addition. This site is located within Wichita's city limits and is zoned SF-5 Single-family Residential and MF-18 Multi-family Residential.

Analysis: Water and sewer services are available to serve the site.

The plat has been approved by the Metropolitan Area Planning Commission, subject to conditions.

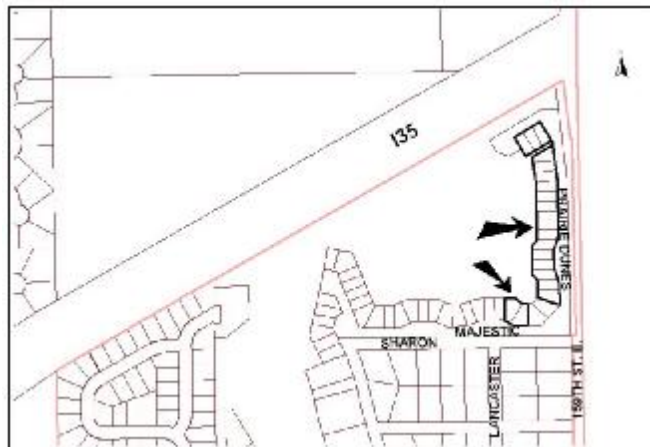
Financial Considerations: None.

Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: None.

Recommendations/Actions: It is recommended that the City Council approve the plat and authorize the necessary signatures.

Attachments: None.



PRELIMINARY ESTIMATES FOR JUNE 22, 2010

- a. The cost of Harry, Greenwich to 127th Street East (Harry, east of Greenwich). (472-84884/991309/636231/620554/770-619/660-671) (District II) – Total Estimated Cost \$4,549,837.00

Page _____ Exhibit _____

City of Wichita
City Council Meeting
June 22, 2010

TO: Mayor and City Council

SUBJECT: Street Paving in Cedar View Village Addition (east of Greenwich, south of Kellogg (District II)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendations: Adopt the resolution.

Background: On October 7, 2008, the City Council approved a petition for street paving in Cedar View Village Addition. The authorizing resolution contained an error in referencing a previous resolution. A resolution has been prepared to correct the error.

Analysis: The project serves new residential development.

Financial Considerations: The approved project budget of \$206,000 is unaffected.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing paving improvements required for new residential development.

Legal Considerations: State Statutes provide the City Council authority to correct the error by resolution.

Recommendation/Actions: It is recommended that the City Council adopt the resolution and authorize the necessary signatures.

Attachments: Resolution.

RESOLUTION NO. 10-171

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING PAVEMENT ON BRISTOL CIRCLE; REMOVAL OF EXISTING PAVEMENT ON AND ADJACENT TO LOTS 7 AND 8 BLOCK 1; NEW PAVEMENT FROM THE NORTH LINE OF LINCOLN STREET TO A POINT 580' NORTH OF LINCOLN STREET CONNECTING TO EXISTING PAVEMENT; CONSTRUCTION OF A CUL-DE-SAC AND EMERGENCY VEHICLE ACCESS GATE AT THE WEST END ADJACENT TO LOT 12, BLOCK 1 AND LOTS 1 AND 2, BLOCK 2; AND CONSTRUCTION OF AN EYEBROW ADJACENT TO LOTS 4 THROUGH 6, BLOCK 2 (EAST OF GREENWICH, SOUTH OF KELLOGG) 472-84637 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING PAVEMENT ON BRISTOL CIRCLE; REMOVAL OF EXISTING PAVEMENT ON AND ADJACENT TO LOTS 7 AND 8 BLOCK 1; NEW PAVEMENT FROM THE NORTH LINE OF LINCOLN STREET TO A POINT 580' NORTH OF LINCOLN STREET CONNECTING TO EXISTING PAVEMENT; CONSTRUCTION OF A CUL-DE-SAC AND EMERGENCY VEHICLE ACCESS GATE AT THE WEST END ADJACENT TO LOT 12, BLOCK 1 AND LOTS 1 AND 2, BLOCK 2; AND CONSTRUCTION OF AN EYEBROW ADJACENT TO LOTS 4 THROUGH 6, BLOCK 2 (EAST OF GREENWICH, SOUTH OF KELLOGG) 472-84637 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 07-692 adopted on December 4, 2007, Resolution No. 08-482 adopted on October 7, 2008 and Resolution No. 10-093 adopted on April 13, 2010 are hereby rescinded.

SECTION 2. That it is necessary and in the public interest to authorize constructing pavement on Bristol Circle; removal of existing pavement on and adjacent to Lots 7 and 8 Block 1; new pavement from the north line of Lincoln Street to a point 580' north of Lincoln Street connecting to existing pavement; construction of a cul-de-sac and emergency vehicle access gate at the west end adjacent to Lot 12, Block 1 and lots 1 and 2, Block 2; and construction of an eyebrow adjacent to Lots 4 through 6, Block 2 (east of Greenwich, south of Kellogg) 472-84637.

Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for in Section 1 hereof is estimated to Two Hundred Six Thousand Dollars (\$206,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after November 1, 2007 exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

CEDAR VIEW VILLAGE ADDITION

Lots 1 through 12, Block 1

Lots 1 through 17, Block 2

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 1 through 5, Block 1; and Lots 12 through 17, Block 2; CEDAR VIEW VILLAGE ADDITION, shall each pay 212/10,000 of the total cost payable by the improvement district. Lots 6 through 12, Block 1; and Lots 1 through 11, Block 2, CEDAR VIEW VILLAGE ADDITION, shall each pay 426/10,000 of the total cost payable by the improvement district.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 9. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 22nd day of June, 2010.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

City of Wichita
City Council Meeting
June 22, 2009

TO: Mayor and City Council

SUBJECT: Community Events - Celebrate 2010
(District IV)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for street closures.

Background: In accordance with the Community Events Procedure, the event promoter, Josh Robertson, Wichita Wingnuts, is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following temporary street closure request has been submitted:

Celebrate 2010 Lawrence Dumont Stadium July 4, 2010 9:00 am – 11:00 pm

§ McLean Boulevard, Douglas Avenue to Lewis Street not including intersections.

Client will arrange to remove blockades as necessary to allow emergency vehicle access during entire designated time period. Blockades will be removed immediately upon completion of the event.

Financial Consideration: The event sponsor is responsible for all costs associated with the special event.

Goal Impact: Enhance the Quality of Life.

Legal Consideration: None.

Recommendation/Actions: It is recommended that the City Council approve the request subject to: (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; (3) Certificate of Liability Insurance on file with the Community Events Coordinator.

City of Wichita
City Council Meeting
June 22, 2010

TO: Mayor and City Council

SUBJECT: Community Events – Automobilia’s Moonlight Car Show & Street Party
(District VI)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events Procedure, the event promoter Gary Carpenter, Automobilia is coordinating with area business owners and making arrangements with staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Automobilia’s Moonlight Car Show & Street Party July 10, 2010 1:00 pm – July 11, 2010 1:30 am

- § First Street, Broadway to Mosley.
- § Topeka Street, Douglas to First Street
- § Emporia Street, Douglas to Second Street
- § St. Francis Street, Douglas to Second Street
- § Santa Fe Street, Douglas to First Street
- § Mead Street, First Street to Douglas
- § Moore Street, First Street to Douglas
- § Rock Island Street, First Street to Douglas

Client will arrange to remove blockades as necessary to allow emergency vehicle access during entire designated time period. Blockades will be removed immediately upon completion of the event.

Financial Consideration: The event sponsor is responsible for all costs associated with special event.

Goal Impact: Enhance the Quality of Life.

Legal Consideration: None.

Recommendation/Actions: It is recommended that the City Council approve the request subject to: (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department. (3) Certificate of Liability Insurance on file with the Community Events Coordinator.

City of Wichita
City Council Meeting
June 22, 2010

TO: Mayor and City Council

SUBJECT: Community Events – Intrust Bank Arena (Eagles)
(District I)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events Procedure, the event promoter Mike Sandbo is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure requests have been submitted:

Eagles June 30, 2010 7:00 am – July 1, 2010 2:00 am

- § William Street, St. Francis to Commerce Street
- § Commerce Street, William to Waterman

Client will arrange to remove blockades as necessary to allow emergency vehicle access during the entire designated time period. Blockades will be removed immediately upon completion of the event.

Financial Consideration: The event sponsor is responsible for all costs associated with special event.

Goal Impact: Enhance the Quality of Life

Legal Consideration: None

Recommendation/Actions: It is recommended that the City Council approve the request subject to: (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department. (3) Certificate of Liability Insurance on file with the Community Event Coordinator.

City of Wichita
City Council Meeting
June 22, 2010

TO: Mayor and City Council

SUBJECT: Heartland Defense Training Center Mitigation Agreement (District I)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the agreement and stream mitigation payment.

Background: On June 9, 2009, the City Council approved an agreement with Sedgwick County that provides for joint funding of street, sanitary sewer, drainage and water line improvements required for the Heartland Defense Training Center. The agreement also designated the City of Wichita as the lead agency for the design and construction of the improvements.

The U.S. Army Corp of Engineers has advised that construction of the drainage improvements will require a permit and environmental stream mitigation efforts. To preserve adequate building area for the National Guard and City/County Facility, offsite stream mitigation is required. It will be necessary to acquire mitigation credits as provided by the Kansas Aquatic Resources Trust Fund. Quotes were taken from area organizations certified to provide such credits in Kansas. The Watershed Institute provided the lowest quote for the credits. An agreement with The Watershed Institute has been prepared to purchase the required 2,211 mitigation credits.

Analysis: The Heartland facility will support consolidated elements of the Kansas Army National Guard and the Marine Corp Reserve including eight distinct units and over 670 personnel on a 30 acre campus near the I-135 and K-96 Freeways.

Financial Considerations: The cost to acquire the required credits is \$59,697. Funding is available in the existing project budget with the City and County equally sharing the cost. The funding source for the City share is General Obligation bonds.

Goal Impact: The project addresses the Safe and Secure Community and Efficient Infrastructure goals by providing a facility for National Guard, Marine Reserves and City/County training.

Legal Considerations: The Department of Law has approved the agreement as to legal form.

Recommendation/Action: It is recommended that the City Council approve the agreement, approve payment in the amount of \$59,697 and authorize the necessary signatures.

Attachments: Agreement.



June 1, 2010

Stan Breitenbach, P.E.
Special Projects Engineer
Department of Public Works-Engineering
City Hall-7th Floor
455 N. Main
Wichita, KS 66202

Re: Permit: City of Wichita, Armed Forces Readiness Center (NWK-2009-00775)

Dear Mr. Breitenbach,

I have enjoyed working with you on this interesting project. I am in receipt of the email response by the Department of the Army, Kansas City District, U.S. Corps of Engineers (USACE) Regulatory Branch dated 2/9/10 and KSMG IMPACT WORKSHEET attachment setting for the mitigation requirements relating to the above permit. According to USACE, the project will impact 670 linear feet stream channel and is located in Wichita Kansas. The email on behalf of USACE contains special conditions on wherein it authorizes the use of in lieu fee for the mitigation.

The use of an in lieu fee mitigation agreement is approved for the mitigation of impacts associated with this project as an alternative to the mitigation plan. If the in lieu fee option is pursued with the Watershed Institute, you must submit written verification that you have reached an agreement prior to the commencement of work within the jurisdictional waters of the U.S.

The Watershed Institute, Inc. has an agreement with USACE to establish an In-Lieu-Fee Aquatic Resource Mitigation Program for the state of Kansas. Pursuant to that agreement, the Watershed Institute has provided a Kansas Aquatic Resources Trust Fund cost proposal. As such, pursuant to that cost proposal and pursuant to the agreement to establish an In Lieu Fee Aquatic Resource Mitigation Program for the state of Kansas, it is necessary that the City provide the funding. Upon receipt of said funding the Watershed Institute will issue a letter of acknowledgement that said funding has been received and that the City's obligation pursuant to the in lieu fee program has been extinguished. From that point forward, the Watershed Institute, Inc. will accept



7211 W. 98th Terr. #140 ♦ Overland Park, Kansas 66212 ♦ (913) 685-4600 ♦ FAX (913) 341-1130

responsibility for the outlined mitigation requirements for the above captioned permit pursuant to the in lieu fee program with USACE.

In coordination and as required by the USACE, please forward the nonrefundable sum of \$59,697 for the purchase of 2,211 credits at \$27/credit along with a signed copy of this letter, and upon receipt we will forward the necessary confirmation to the City and a copy to USACE. Should you have any questions, please feel free to contact the undersigned.



Frank L. Austenfeld, Executive Director
Watershed Institute, Inc.

BY ACTION OF THE CITY COUNCIL


Carl Brewer, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:



Gary Rebenstorf, Director of Law



7211 W. 98th Terr. #140 ♦ Overland Park, Kansas 66212 ♦ (913) 685-4600 ♦ FAX (913) 341-1130

City of Wichita
City Council Meeting
June 22, 2010

TO: Mayor and City Council

SUBJECT: Class I Air Emission Source Operating Permit and Mandatory Greenhouse Gases
Annual Reporting Requirements for Brooks Landfill
- Camp Dresser & McKee Inc. (District VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the issuance of the Request for Proposals (RFP).

Background: In February 2005, the Kansas Department of Health and Environment, per requirements of Title V of the Federal Clean Air Act, issued a Class I Air Emission Source Operating Permit for Brooks Landfill. As the permit requires the periodic filing of complex air emissions data, the City Council approved an agreement with Camp Dresser & McKee Inc., for professional services, to prepare the report on May 2, 2006.

In addition to the emissions reporting already required by its Air Operating Permit, Brooks Landfill is now also subject to new requirements for measuring and reporting greenhouse gas emissions, per the U.S. Environmental Protection Agency's new Mandatory Greenhouse Gases (GHG) Reporting Rule. The rule was published in the Federal Register on October 30, 2009, and requires that covered facilities begin measuring GHG emissions on January 1, 2010, and reporting total annual emissions beginning March 31, 2011.

The complexity of the technical reports required by the landfill's Air Operating Permit continues to necessitate its preparation by a specialized professional. The new Mandatory GHG Reporting Rule has similar, if not more specialized technical reporting requirements. The previous contract for this work expired May 31, 2010. A Request for Proposals (RFP) was developed and released on March 10, 2010, in effort to secure a new contract prior to the next reporting deadline in July, 2010.

A total of seven written proposals were received in response to the RFP. The Staff Screening and Selection Committee convened on April 21, 2010, to review the proposals and, based on criteria outlined in the RFP, selected three firms to interview. Interviews were conducted on May 6, 2010, and members of the committee individually ranked the presentations and proposals based on the ranking criteria included in the RFP.

Analysis: The Staff Screening and Selection Committee recommends award of the contract to Camp Dresser & McKee Inc., based on its experience on previous projects, staff expertise, available resources, and price. The firm proposes use of a highly qualified, expert staff and has extensive experience providing similar services for the City of Wichita and throughout Kansas.

Financial Considerations: Camp Dresser & McKee Inc. has provided the City with line item costs to accomplish the required work. The costs and details are outlined in the contract. Funds are available in the Landfill Post Closure Fund for this work, the cost of which is not to exceed \$27,900, per year.

Goal Impact: This project addresses the Safe and Secure Community goal by improving the community's environmental health.

Legal Considerations: The Law Department has approved the contract with Camp Dresser & McKee Inc. as to legal form.

Recommendations/Actions: It is recommended that the City Council approve the contract and authorize the necessary signatures.

Attachment: Contract.

AGREEMENT
for
PROFESSIONAL SERVICES
between
THE CITY OF WICHITA, KANSAS
and
CAMP DRESSER & McKEE INC
for
CLASS I AIR EMISSION SOURCE OPERATING PERMIT AND MANDATORY GREENHOUSE GASES
ANNUAL REPORTING REQUIREMENTS FOR BROOKS LANDFILL

THIS AGREEMENT, made this _____ day of _____, 2010,
by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and CAMP
DRESSER & McKEE INC., party of the second part, hereinafter called the "CONSULTANT".

WITNESSETH: That

WHEREAS, the CITY wishes to satisfy the Class I permit and Mandatory Greenhouse Gases annual reporting re-
quirements for the Brooks Landfill in Wichita, Kansas, hereafter called the "PROJECT"; and

WHEREAS, CONSULTANT has available and offers to provide personnel, and technical services necessary to ac-
complish the PROJECT work within the required time; and

WHEREAS, the CITY is authorized by law to employ Consulting Engineers to assist with the implementation of
such PROJECT;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

- A. The CONSULTANT will furnish professional services as set out in Exhibit B (Scope of Services),
which is attached hereto and incorporated herein by reference. The CONSULTANT shall provide to
the CITY all those commodities and/or services specified in its response to Formal Proposal Number -
FP030019, which is incorporated herein by reference the same as if it were fully set forth. The
proposal package, including all specifications, plans and addenda, provided by the CITY as part of the
proposal letting process for Formal Proposal - FP030019, shall be considered part of this contract
incorporated herein by reference.
- B. In the event of delays in the performance by the CONSULTANT due to circumstances caused by the
CITY, the CONSULTANT'S schedule of performance shall be equitably adjusted to account for such
delay.

II. ADDITIONAL SERVICES

When requested by the CITY, the CONSULTANT will enter into a Supplemental Agreement for additional
services related to the Project such as, but not limited to:

- A. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings
related to the Project.
- B. Additional design services not covered by the scope of this Agreement.
- C. A change in the Scope of Services for the Project.

In the event of a change in the Scope of Services for the Project, caused by an act or omission of CITY, or any error or change in CITY-provided information, or change in law, or event of force majeure, or if additional services should be necessary, the CONSULTANT will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional services will be performed nor will additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

III. IN ADDITION, THE CONSULTANT AGREES

- A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit B).
- B. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this Agreement.
- C. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from and to the extent caused by the negligent acts, errors or omissions of CONSULTANT, its agents, servants, employees, or subcontractors occurring in the performance of its services under this Agreement. Notwithstanding anything contained herein to the contrary, CITY acknowledges that CONSULTANT is not responsible for any preexisting contamination from hazardous materials or waste at or near the site(s) where CONSULTANT shall perform its work or services on CITY'S behalf. Therefore, CITY agrees that CONSULTANT shall have no liability for preexisting contamination or hazardous wastes or materials on or near the site or sites on which the services or work of the CONSULTANT are performed, nor for the spread of such material except to the extent that such spread is finally determined to have been caused by the sole negligence or willful misconduct of the CONSULTANT.
- D. Notwithstanding any other provisions of this Agreement to the contrary, neither party including their officers, agents, servants and employees shall be liable to the other for lost profits or any special, indirect, incidental, or consequential damages in any way arising out of this Agreement however caused under a claim of any type or nature based on any theory of liability (including, but not limited to: contract, tort, or warranty even if possibility of such damages has been communicated), except that CONSULTANT, including its officers, agents, servants and employees shall be liable to the CITY for direct damages arising due to the sole negligence or willful misconduct of the CONSULTANT.
- E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by CONSULTANT and, where relevant to method of payment, to make such material available to the CITY.
- F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY's Affirmative Action Program as set forth in Exhibit A which is attached hereto and adopted by reference as though fully set forth herein.
- G. To accept compensation for the services herein described in such amounts and at such periods as provided in Article V and that such compensation will be satisfactory and sufficient payment for services performed and equipment or materials used in connection with such services.
- H. To complete the services to be performed by CONSULTANT within the time allotted for the PROJECT in accordance with Exhibit B; EXCEPT that the CONSULTANT will not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the CONSULTANT.
- I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the CONSULTANT under this Agreement in accordance with customarily accepted engineering practices.

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CONSULTANT further agrees, covenants and represents that all work or material furnished by CONSULTANT, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be performed in accordance with generally accepted professional engineering practices at the time when and place where the services are rendered.

- J. CONSULTANT will procure and maintain, for the duration of this Agreement, such insurance as will protect the CONSULTANT from damages resulting from the negligent acts, errors, or omissions of the CONSULTANT, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this Agreement. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to a deductible of \$10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy will include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit will not be less than:

Workman's Compensation – Statutory
Employer's Liability - \$500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the CONSULTANT that will be written in a comprehensive form and will protect CONSULTANT against all claims arising from injuries to persons (other than CONSULTANT's employees) or damage to property of the CITY or others arising out of any negligent act or omission of CONSULTANT, its agents, officers, employees or subcontractors in the performance of the professional services under this Agreement. The liability limit will not be less than \$500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time CONSULTANT starts any work under this Agreement. In addition, insurance policies applicable hereto will contain a provision that provides that the CITY will be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

- K. To designate a Project Manager for the coordination of the work that this Agreement requires to be performed. The CONSULTANT agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the services required by this agreement. The CONSULTANT shall also advise the CITY of any changes in the person designated Project Manager. Written notification will be provided to the CITY for any changes exceeding one week in length of time.

IV. THE CITY AGREES

- A. To furnish all available data pertaining to the PROJECT now in the CITY's files at no cost to the CONSULTANT. Confidential materials so furnished will be kept confidential by the CONSULTANT. CONSULTANT will have no liability for defects in the Services attributable to CONSULTANT's reliance upon or use of data, information, reports, analyses, protocols, plans, or other information furnished by or through the CITY or third parties retained by CITY, unless verification of such information is expressly included in the Scope of Services.
- B. To pay the CONSULTANT for his services in accordance with the requirements of this agreement.
- C. To provide the right-of-entry for CONSULTANT's personnel in performing field surveys and inspections.
- D. To designate a Project Manager for the coordination of the services that this Agreement requires to be performed. The CITY agrees to advise, the CONSULTANT of the person(s) designated as Project Manager with the issuance of the notice to proceed on the services required by this Agreement. The CITY shall also advise the CONSULTANT of any changes in the person(s) designated Project Manager. Written notification will be provided to the CONSULTANT for any changes exceeding one week in length of time.

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- E. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by CONSULTANT in a timely fashion.

V. **PAYMENT PROVISIONS**

- A. Payment to the CONSULTANT for the performance of the professional services required by this Agreement will be on a maximum not-to-exceed basis as follows:

1. Amount of Payment:

- a. Payment to the CONSULTANT for the performance of its services shall be based on the actual units of work performed and on the schedule of fees set out in Exhibit C, which is attached hereto and incorporated herein by reference.
- b. Total payment for the Scope of Services described herein will not exceed Twenty-seven Thousand, Nine Hundred Dollars (\$27,900) per year, for the two year term, without written approval of CITY.

2. Invoices:

- a. Monthly invoices will be submitted by CONSULTANT to CITY covering services performed and expenses incurred during preceding month.
- b. Invoices will set forth: hours worked by each person, total hours worked and total labor billing, and a summary of expenses and charges. Upon request, documentation of reimbursable expenses included in the invoice will be provided at the cost to CONSULTANT.

3. Payments:

- a. Invoices are due upon receipt. In the event a portion of CONSULTANT's invoice is disputed by CITY, the undisputed portion shall be paid by CITY by the due date. CITY shall advise CONSULTANT in writing of the disputed portion of any invoice.

VI. **THE PARTIES HERETO MUTUALLY AGREE**

- A. That the term of this Agreement shall be two (2) years from the date of Agreement, with options to renew the Agreement under the same terms and conditions for two (2) successive one (1) year terms by mutual agreement of the parties.
- B. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the CONSULTANT's inability to proceed with the services, or because the services of the CONSULTANT are unsatisfactory; provided, however, that in any case the CONSULTANT shall be paid the reasonable value of the services rendered up to the time of termination on the basis of the provisions of this Agreement.
- C. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the CONSULTANT's services in accordance with this Agreement; and there will be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold CONSULTANT harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
- D. That the services to be performed by the CONSULTANT under the terms of this Agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

- E. In the event of unavoidable delays in the progress of the services contemplated by this Agreement, reasonable extensions in the time allotted for the work may be granted by the CITY, provided, however, that the CONSULTANT will request extensions in writing, giving the reasons therefor.
- F. It is further agreed that this Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the parties hereto and their successors and assigns.
- G. Neither the CITY's review, approval or acceptance of, nor payment for, any of the services required to be performed by the CONSULTANT under this Agreement shall be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement.
- H. The rights and remedies of the CITY provided for under this Agreement are in addition to any other rights and remedies provided by law.
- I. It is specifically agreed between the parties executing this Agreement, that it is not intended by any of the provisions of any part of this Agreement to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.
- J. Nothing contained in this Agreement shall be construed or interpreted as requiring CONSULTANT to assume the status of a generator, storer, arranger, operator, treater, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42USCA, Section 6901, et seq. (RCRA), Comprehensive Environment Response Control Liability Act (CERCLA), or any other federal or state statute of similar effect governing the generation, storage, arrangement, for disposal, operations, treatment
- K. Dispute Resolution. If any dispute arises between the Parties, both Parties agree to meet, in person if necessary and make a reasonable and good faith effort to resolve the dispute prior to initiating any type of legal action.

IN WITNESS WHEREOF, the CITY and the CONSULTANT have executed this agreement as of the date first written above.

CITY OF WICHITA

Carl G. Brewer, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

APPROVED:

Chris Carrier, Director of Public Works

CONSULTANT

Name & Title

ATTEST:

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Exhibit A

**REVISED NON-DISCRIMINATION AND
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended; The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11141; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
 2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
 3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
 4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

Exhibit B

Scope of Work Class I Air Permit Reporting Requirements Brooks Landfill, Wichita, Kansas

Scope of Work

CDM will work directly with the City and the City's contractors (Herzog, DTE Biomass, etc.) to request the appropriate data for the required reporting efforts from the appropriate parties as specified in the memorandum of understanding between the City and Herzog and DTE Biomass. CDM requires these data will be provided in electronic format where applicable. All submittals will be completed approximately one week prior to submittal deadlines to allow time for review and signature (if applicable) by the City. CDM will submit each report to the appropriate agencies on behalf of the City and within a time frame that will ensure receipt of the report at the agency before or on the deadline date.

Task 1 - Annual NSPS Reports

Both the NSPS for municipal solid waste landfills (MSWLFs) (40 CFR 60 Subpart WWW) and the NESHAP for MSWLFs (40 CFR 63 Subpart AAAA) apply to the Brooks Landfill. The NSPS requires that a compliance report be prepared and submitted to the KDHE annually. The annual report is expected to include, at a minimum, monthly wellhead monitoring data, quarterly surface methane monitoring data, a summary of activities including gas stream diversion and control device downtime, and any deviations from the compliance requirements. The annual NSPS report will be combined with the second semiannual NESHAP and monitoring and recordkeeping reports, and would include a summary of deviations during the reporting period.

Per the Class 1 air operating permit and as modified with KDHE approval on May 11, 2007, the annual NSPS report will be submitted to the KDHE by January 31, 2011 and annually thereafter for the term of the agreement including any applicable extensions.

Task 2 - Semiannual NESHAP Reports

NESHAP requires that the NSPS compliance summary reports be prepared and submitted to KDHE semiannually. These semiannual NESHAP reports will include monthly wellhead monitoring data, quarterly surface methane monitoring data, a summary of activities including gas stream diversion and control device downtime, and any deviations from the compliance requirements. The NESHAP reports will be combined with the semiannual monitoring and recordkeeping reports; include a summary of deviations during the reporting period; and address any reporting requirements under the NSPS. Per the City's Class 1 air operating permit and as modified with KDHE approval May 11, 2007, the semiannual NESHAP reports would be submitted to the KDHE by July 31, 2010 (covering January 1 through June 30) and January 31, 2011 (covering July 1 through December 31) and semiannually thereafter for the term of the agreement including any applicable extensions.

Exhibit B

Scope of Work Class I Air Permit Reporting Requirements Brooks Landfill, Wichita, Kansas

The January reports will be combined with the annual NSPS reporting, consistent with the submittals of 2006 through 2010.

Task 3 - Annual Emission Inventory Report

The City is required by its Class 1 air operating permit for the Brooks Landfill to report facility-wide emissions to the KDHE each year. CDM will request and evaluate operations data from the City, Herzog, and DTE Biomass to fulfill the emissions reporting requirements, including: condensate collection amount and analysis; generator, parts washer, etc. run times; fuel usage; flare operational information; and other appropriate information. CDM will then prepare the Emissions Inventory report based on the provided information. The KDHE's online Emissions Inventory Web Submittal System may be used to prepare and submit this report. CDM will provide the completed forms to the City for review at least three weeks prior to the submittal deadline. Following this review, a final report would be submitted to the City for signature and submittal to the KDHE prior to the deadline and annually thereafter for the term of the agreement including any applicable extensions. For submittal of the Emissions Inventory report through 2010, the submittal deadline was June 1 of each year. CDM understands that effective in 2011, the submittal date will be changed to April 1 for the 2011 and subsequent reports.

Semiannual Monitoring and Recordkeeping Reports

The City is required by its Class 1 air operating permit for the Brooks Landfill to submit semiannual reports summarizing any monitoring and recordkeeping activities at the landfill during the previous 6-month period. CDM will collect and evaluate operations data from the City, Herzog, and DTE Biomass as needed to satisfy the reporting requirements, and will prepare the reports. The deadlines for these monitoring and recordkeeping reports are concurrent with the deadlines established for the NESHAP reports. Therefore these activity summaries will be included within the NESHAP reports and submitted concurrently to the KDHE by July 31, 2010 (covering January 1 through June 30) and January 31, 2011 (covering July 1 through December 31) and semiannually thereafter for the term of the agreement including any applicable extensions. This will be consistent with previous submittals.

Task 4 - Annual Compliance Certification

The City is required by its Class 1 air operating permit for the Brooks Landfill to submit an annual compliance certification to the KDHE and the United States Environmental Protection Agency (EPA) - Air and EPCRA Enforcement Branch. CDM will collect information as needed from the City, Herzog, and DTE Biomass to complete the certification forms. CDM will review the supplied information and the City's Class 1 air operating permit, identify all applicable permit terms and conditions, determine the compliance status of each permit term and condition using appropriate and acceptable methods, specify details for any noted deviations from the permit terms and conditions, and enter the descriptive information into

Exhibit B

Scope of Work Class I Air Permit Reporting Requirements Brooks Landfill, Wichita, Kansas

the forms provided by the KDHE. Following the City's review of the draft certification report, a final report will be submitted to the City for signature and submittal to the KDHE and EPA prior to the January 31, 2011 deadline and annually thereafter for the term of the agreement including any applicable extensions..

Task 5 - Greenhouse Gas Reports

The Brooks Landfill is subject to the EPA's Mandatory Greenhouse Gas Reporting Rule (40 CFR 98) established in 2009 and all amendments thereto. CDM will perform an audit of all emissions sources at the landfill subject to the rule and collect applicable operations data from the City, Herzog, and DTE Biomass in order to perform all requisite calculations (including methane generation using an EPA-accepted model) as described in Subpart HH of the rule.

CDM will provide a draft annual report, prepared as described in 40 CFR 98.3(c) and amendments thereto, for the City to review prior to the submittal deadline. Following this review, a final report will be prepared and submitted to the City for signature and submittal to the EPA by the March 31, 2011 deadline and annually thereafter for the term of the agreement including any applicable extensions

Task 6 - Deviation Reports

CDM will assist the City with a compliance review and assessment for the Brooks Landfill by conducting a thorough review of the facilities, operations, practices, and appropriate permit and plan documents at the Brooks Landfill. As part of this task, CDM will help the City confirm that all emissions sources are properly documented, permit documents are current, and that ongoing operations are fully compliant with the Class 1 air operating permit and greenhouse gas reporting requirements. Following the review, CDM will provide the City with a summary of any deficiencies and proposed required or recommended corrective actions. CDM will also assist the City in implementing those actions selected by the City and/or provide confirmation once compliance is achieved/verified. The initial review would be completed by October 1, 2010.

Task 7 - Deviation Reports

The City is required to identify all instances of deviations, including perceived opacity exceedences. These deviations are normally noted in the semiannual monitoring and recordkeeping reports. Additionally, deviations from permit requirements are required to be reported orally and in writing to the KDHE and the Wichita Department of Environmental Health. The City will provide to CDM well monitoring and SSM reports on a monthly basis (as noted in the Request for Proposal) or as unusual issues or conditions arise. Under this task, CDM will review the provided information, advise the City when deviation notifications are needed, and assist the City in preparing any necessary reports..

EXHIBIT C

CAMP DRESSER & McKEE INC.
SCHEDULE OF HOURLY BILLING RATES
VALID THROUGH APRIL 30, 2012

<u>CATEGORIES</u>	<u>HOURLY RATES</u>
<u>PROFESSIONAL SERVICES:</u>	
PROFESSIONAL I	\$ 80.00
PROFESSIONAL II	\$100.00
PROFESSIONAL III	\$110.00
SENIOR PROFESSIONAL	\$155.00
PRINCIPAL/ASSOCIATE OFFICER	\$190.00 \$220.00
<u>PROJECT SUPPORT SERVICES</u>	
STAFF SUPPORT SERVICES	\$ 80.00
FIELD SENIOR PROFESSIONAL	\$ 75.00
SENIOR SUPPORT SERVICES	\$ 90.00
PROJECT ADMINISTRATION	\$ 60.00
SECRETARIAL SUPPORT	\$ 50.00

A

City of Wichita
City Council Meeting
June 22, 2010

TO: Mayor and City Council

SUBJECT: Technical Services for Energy Efficiency Community Block Grant (EECBG)
(All Districts)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the contract.

Background: On December 21, 2009, the City of Wichita received a Department of Energy (DOE) Energy Efficiency Community Block Grant (EECBG). This grant provides funds for projects that meet certain grant criteria. Project activities are required to be tracked and performance measured relative to energy efficiency and emission reductions as identified in the grant application. As part of the Grant application, the City partnered with Wichita State University (WSU) to provide a third-party analysis for each EECBG project.

Analysis: The City will utilize WSU to provide technical services as identified in the attached contract. WSU's sustainability initiative group will utilize life cycle analysis of direct and indirect impacts to determine energy efficiencies and emission reductions undertaken by the City for the EECBG. WSU will evaluate the projects, identify data needed to analyze each project, train City staff to collect data, analyze results, and provide an energy efficiency report for the following six projects:

1. Office of Environmental Health energy efficient chiller and cooling tower upgrade
2. Occupancy sensors for offices in City Hall
3. Synchronization of traffic signals
4. Boiler survey and retrofits
5. McAdams bike pathway
6. Community energy efficiencies and air emissions reduction

Financial Considerations: The cost for the analysis activity is \$55,000, which is included in the EECBG budget and has been approved by the Department of Energy as an authorized expenditure.

Goal Impact: This contract addresses the Efficient Infrastructure goal by determining the energy saved and emissions reduced by implementing the EECBG projects.

Legal Considerations: The Law Department has approved the contract as to legal form.

Recommendation/Action: It is recommended that the City Council approve the contract with Wichita State University and authorize the necessary signatures.

Attachments: WSU Contract for Evaluation of Energy Efficiency and Emission Reductions.

WICHITA STATE UNIVERSITY ROLE IN CITY OF WICHITA FEDERAL STIMULUS
PROJECT
EVALUATION OF ENERGY SAVINGS AND EMISSION REDUCTIONS

Principal Investigators: Michael R. Overcash, PhD, William H. Wentz Jr., PhD, and Janet
Twomey, PhD

BACKGROUND:

The sustainability initiative at Wichita State University has expertise in analysis of direct and indirect impacts of energy savings alternatives. Professor Wentz and colleagues from Wichita State University have conducted quantitative assessments of greenhouse gas (GHG) emissions related to city of Wichita operations from 2006 to the present. These assessments include electricity use, transportation, and natural gas and other industrial gas use. The studies utilize data the city routinely records for cost and resource accounting, combined with GHG methodologies developed by the EPA, other public sources, and the WSU team. A spreadsheet tool for recording and analyzing this information has been developed and made available at no cost to the city. This software will be updated in collaboration with Environmental Health staff during the course of the project to reflect more current data and to add items not included in the earlier studies. The results provide a record of current status and annual trends. The computer software provides a management tool to project and quantitatively evaluate a wide variety of proposed future strategies in terms of energy, cost and emission savings. The project described in this proposal will expand the previous studies to include city specific activities for cost and energy savings that will be accomplished under the new Federal program for economic recovery.

WSU ROLE IN CITY OF WICHITA PROJECT:

The most cost-effective and efficient approach will be used in this three year project, initially covering six activities. The majority of the data and information needed for the analysis of each energy improvement project outlined below will be collected by the knowledgeable individuals with direct access to the field sites. In general, these are City of Wichita employees. The WSU investigators will

- a. establish the details of which data, time periods, and qualitative information will need to be collected,
- b. train the field personnel in data collection,
- c. meet and review data collected to trouble-shoot improvements
- d. analyze the results and prepare reports regarding lessons learned and achievement of City improvement goals
- e. work with City as they communicate the results to employees, decision-makers, and public, and
- f. if appropriate, publish results for broader distribution.

PROJECT APPROACH

There are six activities covered currently in this project,

1. energy efficient chiller and cooling tower
2. occupancy sensors
3. synchronization of traffic signals
4. boiler survey

5. McAdams bike pathway
6. community involvement in energy and air emissions program

All of these activities have first a baseline phase. WSU will meet first with the managers of these six activities to develop the information frameworks. Then WSU will meet to train the field data collection team to establish the baseline data that will be needed. Since each activity will start at different times during the three year project, the investigators will meet at each start up time to train for data collection. After about one month of data collection, the investigators will review the information and make recommendations on any possible improvement.

The analysis of information collected under each activity will be used to establish major parameters such as costs or savings; energy by type and origin of source; jobs created; and changes in materials use. This information will be then analyzed for impact of reductions, unified energy impact as greenhouse gases, materials diverted or sent to landfill, etc. These improvements will be compared to the 20% reduction of each individual activity.

Communications of results is important and WSU will work with the City as they establish how to effectively inform audiences of the improvements gained in this project. These audiences include City employees as a means to foster further or ongoing improvements. Decision-makers such as elected officials will also be a part of communications as they are committed to cost improvements. The public is another important audience for the City.

EXHIBIT B

BUDGET

Item	Jan. 1, 2010 – Dec 31, 2010	Jan. 1, 2011 – Dec. 31, 2011	Jan. 1, 2012 – Dec. 31, 2012	Total
Salary, post-doc	\$ 15,417	\$12,917	\$ 12,917	\$ 41,251
Fringe benefits, post-doc, 20%	\$ 3,083	\$ 2,583	2,583	\$ 8,249
Travel	\$1,000	\$1,500	\$ 1500	\$4,000
Supplies	\$500	\$500	\$500	\$ 1,500
Indirect costs	0	0	0	0
Total	\$ 20,000	\$17,500	\$17,500	\$55,000

SUBCONTRACT / SUBGRANT INFORMATION FORM

(To be used when subcontract/subgrant has an estimated cost less than 25% of the prime recipient's allocation or \$1,000,000, whichever is less)

PRIME RECIPIENT:	City of Wichita, Kansas
AWARD NUMBER:	DE-EE0000726/000

SUBCONTRACTOR / SUBGRANTEE NAME:	Wichita State University
DUNS NUMBER:	053078127
SUBCONTRACT / SUBGRANT AMOUNT:	\$60,000

ACTIVITY TITLE(S):	Community Energy Efficiency & Air Emissions Program
STATEMENT OF WORK :	
The sustainability initiative at Wichita State University will utilize life cycle analysis of direct and indirect impacts of energy savings alternatives undertaken by the City of Wichita DOE project. This involves training City personnel to collect data, analyze results, and provide an energy improvement report for these six projects.	

RECIPIENT ADDRESS:	Office of Research Administration 1845 N. Fairmount, Box 7 Wichita, KS 67260-0007
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CONTRACT
for
Evaluation of Energy Savings and Emission Reductions

THIS CONTRACT entered into this XX day of June, 2010 by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called "**CITY**", and Wichita State University.

WITNESSETH:

WHEREAS, the **CITY** has been awarded an Energy Efficiency Community Block Grant which will assist the City in reducing fossil fuel emissions, reduce total energy use of eligible entities and improve energy efficiencies in City facilities and transportation corridors. The City has solicited a proposal to assist the City in measuring the reductions and efficiencies associated with the said energy uses.

WHEREAS, the **CONTRACTOR** has submitted the proposal most beneficial to the **CITY** and is ready, willing, and able to provide the commodities and/or services required by the **CITY**.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Scope of Services.** **CONTRACTOR** shall provide to the **CITY** all those services and/or commodities specified in its response to proposal which is incorporated herein by this reference the same as if it were fully set forth. The proposal, including all specifications, provided by the City of Wichita as part of the proposal shall be considered a part of this contract and is incorporated by reference herein.

2. **Compensation.** **CITY** agrees to pay to **CONTRACTOR** the amounts listed in Exhibit B for the energy savings evaluation as per the proposal and as approved by the City Manager on April xx, 2010.

Contract Not to Exceed in the amount of Fifty-Five Thousand Dollars (\$55,000).

3. **Term.** The term of this contract shall be in effect until December 21, 2012. This contract is subject to cancellation by the **CITY or CONTRACTOR**, at its discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to **CONTRACTOR or CITY**.

4. **Indemnification and Insurance.**

a. Each Party shall save and hold the other harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by the errors, omissions or negligent acts of itself, its officers, agents, servants, or employees, occurring in the performance of its services under this Contract, or arising from any defect in the materials or workmanship of any product provided in the performance of this Contract.

b. **CONTRACTOR** will carry insurance coverage during the term of this contract and any extensions thereof in the amounts and manner provided as follows:

1. Comprehensive General Liability covering premises—operations, xcu (explosion, collapse and underground) hazards when applicable, Product/Completed operations, Broad Form Property Damage, and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$500,000 each occurrence \$500,000 each aggregate
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Property Damage Liability	\$500,000 each occurrence \$500,000 each aggregate
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Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$500,000 each occurrence \$500,000 each aggregate
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2. Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

Bodily Injury Liability	\$500,000 each accident
Property Damage Liability	\$500,000 each accident

Or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$500,000 each accident
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3. Workers' Compensation/Employers Liability for minimum limits of:

Employers Liability	\$100,000 each accident
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The Insurance Certificate must contain the following:

- A. Statement that the Contractual Liability includes the Liability of the City of Wichita assumed by the Contractor in the contract documents.
- B. Cancellation – should any of the above policies be canceled before the expiration date thereof the issuing company will mail ten (10) days written notice to certificate holder.

5. **Independent Contractor.** The relationship of the **CONTRACTOR** to the **CITY** will be that of an independent contractor. No employee or agent of the **CONTRACTOR** shall be considered an employee of the **CITY**.

6. **Compliance with Laws.** **CONTRACTOR** shall comply with all laws, statutes and ordinances which may pertain to the providing of services under this Contract.

7. **No Assignment.** The services to be provided by the **CONTRACTOR** under this Contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.

8. **Non-Discrimination.** **CONTRACTOR** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached hereto as Exhibit A.

9. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of any part of this Contract to create the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Contract to maintain a suit for damages pursuant to the terms or provisions of this Contract.

10. **No Arbitration.** The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

11. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas.

12. **Representative's Authority to Contract.** By signing this contract, the representative of the contractor or **CONTRACTOR** represents that he or she is duly authorized by the contractor or **CONTRACTOR** to execute this contract, and that the contractor or **CONTRACTOR** has agreed to be bound by all its provisions.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

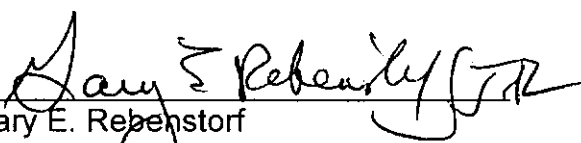
ATTEST:

CITY OF WICHITA, KANSAS

Karen Sublett
City Clerk

Robert Layton
City Manager

APPROVED AS TO FORM:



Gary E. Rebenstorf
Director of Law

Wichita State University

Signature

Print Name

Title

EXHIBIT A

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, Contractor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, Contractor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or Contractor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
1. The Contractor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
 2. The Contractor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the Contractor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
 3. The Contractor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the Contractor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the Contractor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
 4. The Contractor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subcontractor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, Contractors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those Contractors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, Contractor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

**City of Wichita
City Council Meeting
June 22, 2010**

TO: Mayor and City Council

SUBJECT: KDHE Watershed Restoration and Protection Strategy (WRAPS)
Grant Application (All Districts)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendations: Approve the grant application and acceptance of the grant award.

Background: Reducing pollution in the condition of the Arkansas River has been a priority for the City of Wichita for many years. Over the last several years, the Kansas Department of Health and Environment (KDHE) has initiated a program for the development and implementation of Watershed Restoration and Protection Strategies (WRAPS), and is making grant funding available for these efforts. Program elements include identification and assembly of stakeholders, assessment of needs and opportunities, development of goals, and implementation of cost effective strategies relative to watershed restoration and protection.

On April 30, 2010 staff submitted the WRAPS Development Phase Report to KDHE for approval. City Council approved this \$50,000 WRAPS Development Grant (Phase 1) in April 2008. This grant addresses the initial stages of the WRAPS program including identification and assembly of stakeholders. Utilizing the WRAPS process, the City contacted over 700 residents and developed a stakeholder leadership team (SLT) of 25 members. The team consists of District Advisory Board members, representatives from local neighborhood and homeowner associations, business and industry, local architecture and engineering consultant firms, environmental interest groups, local and state agencies, and City staff.

Analysis: The next phase, which is known as the Assessment Phase, the stakeholders will further define the goals for the Lower Arkansas watershed, characterize watershed conditions, identify needs and opportunities, and understand how the watershed responds to various management scenarios.

In an effort to provide the best working opportunity and be in compliance with KDHE and Environmental Protection Agency (EPA) grant conditions for the WRAPS program, the SLT and the City have determined the best way to move collectively forward is to create a Memorandum of Understanding (MOU) which outlines their duties during the assessment phase. The City is the designated sponsoring agency for the WRAPS SLT.

Financial Considerations: This request is for funding to assess the condition of priority areas of the Arkansas River and tributaries, and to design and install demonstration projects to address water quality issues such as bacteria levels and sedimentation. The total cost of this WRAPS assessment is \$117,667 of which \$70,000 will come from EPA Clean Water Act 319 funding and \$46,667 from a local match. The local match will be in the form of in-kind services (demonstrations, meeting support and facilities, etc).

Goal Impact: The grant addresses the goals for Safe and Secure Communities, Core Area, Efficient Infrastructure and Quality of Life. Water quality protection and improvements of the Arkansas River supports economic, recreational, healthy and aesthetic development initiatives in the City's core area.

Legal Considerations: The Law Department has approved the contract as to legal form.

Recommendation/Action: It is recommended that the City Council approve the grant application, the grant award, and authorize the necessary signatures.

Attachments: KDHE NonPoint Source Financial Assistance Agreement.

Kansas Department of Health and Environment
Nonpoint Source Financial Assistance Agreement

Project Number: 2008-W001

Project Name: KS WRAPS: Lower Arkansas City of Wichita Assessment & Planning (SFY10/FFY08)

Cooperator: City of Wichita
455 N Main
Wichita, KS 67202
FEIN: 486000653

Cooperator's Contact: Rebecca Lewis
1900 E 9th St.
Wichita, KS 67214
Phone: (316) 268-8351

Fax: E-Mail: rlewis@wichita.gov

Grant Amount:	\$70,000	<u>U.S. EPA FFY</u> 2008	<u>State Fiscal Year</u> 2010
		<u>Grant No.</u> C9007405 15 C9007405 15	<u>Index No.</u> 959C 9599

Matching Contribution: \$46,667

Grant Period: 08/01/2010 to 04/30/2012

Advance Payment: \$14,000 Reserve Amount: \$7,000

Project Officer: Scott Satterthwaite/KDHE Phone: (785) 296-4195

Subject to the attached grant conditions, the Kansas Department of Health and Environment herewith grants to the cooperator the amount of \$70,000 for the purposes of performing the project described in the project implementation plan found on Attachment 1.

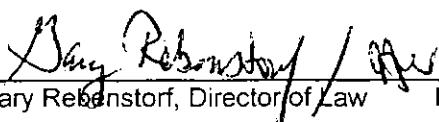
Special Conditions:

The undersigned hereby is duly authorized to accept this grant offer and; agrees to comply with the terms and conditions (Attachment 2) set out by; this agreement. This grant offer is effective upon signature of the; Secretary, Kansas Department of Health and Environment.

Carl Brewer Date
Mayor
City of Wichita

Roderick L. Bremby Date
Secretary
Kansas Department of Health and Environment

Karen Sublett, City Clerk Date



Gary Rebenstorf, Director of Law Date

City of Wichita
City Council Meeting
June 22, 2010

To: Mayor and City Council

Subject: Renewal of Contract – Kansas Department of Agriculture Food Service Establishment Inspection and Regulatory Services Contract (All Districts)

Initiated By: Department of Public Works

Agenda: Consent

Recommendation: Approve renewal of the contract.

Background: The Office of Environmental Health conducts inspections of food service establishments within Wichita and Sedgwick County on behalf of the Kansas Department of Agriculture (KDA). Environmental Health staff enforces state regulations and initiates state enforcement mechanisms as appropriate. KDA remits 80% of license revenue (as established by state statute) to the City and provides enforcement assistance and training for local staff. KDA has proposed renewal of the contract for state fiscal year 2011.

Analysis: Contract inspections by local entities reduce duplication of effort, provide a single source of contact for industry and citizens, and contribute substantially to local food protection budgets. The use of Kansas regulations and enforcement procedures promotes consistency with other jurisdictions within the state.

Financial Consideration: Staff estimates the value of the contract at approximately \$376,000. The City of Wichita receives 80% of the licensing revenue collected by KDA from licensed food service establishments in Sedgwick County. This KDA revenue represents approximately 88% of the Environmental Health food inspection budget. The remaining 12% is funded from City grocery license fees and charges for on-site food handler classes.

Goal Impact: This contract addresses the Safe and Secure Community goal by providing inspection, education, and enforcement actions to reduce the risk of food-borne illness.

Legal Consideration: The contract has been reviewed by the Department of Law for approval as to legal form.

Recommendation/Actions: It is recommended that the City Council approve the KDA contract and authorize the necessary signatures.

Attachment: 2010-2011 KDA contract and contractual provisions.

CONTRACT
between
KANSAS DEPARTMENT OF AGRICULTURE
and
CITY OF WICHITA DEPARTMENT OF PUBLIC WORKS
for
FOOD SERVICE ESTABLISHMENT INSPECTIONS AND REGULATORY SERVICES

This CONTRACT, to be effective July 1, 2010, and to terminate June 30, 2011, states the agreement of the parties, the Kansas Department of Agriculture (KDA) and the City of Wichita Department of Public Works (LOCAL AGENCY), relating to the inspection of food service establishments, as defined in K.S.A. 36-501, located in Sedgwick County, Kansas, in order to protect the health of the public.

WHEREAS the Secretary of the Kansas Department of Agriculture, authorized by K.S.A. 36-501, has determined that the LOCAL AGENCY is a qualified political subdivision of the State of Kansas and is authorized to act under contract as an agent of the KDA in providing food service establishment inspection and regulatory services. KDA has further determined that it is feasible and proper to contract with the LOCAL AGENCY for such purposes.

1. **History.** Executive Reorganization Order 32 transferred specific powers, duties and functions to KDA on October 1, 2004, under the Kansas Food Service and Lodging Act, K.S.A. 36-501 *et seq.*, relating to the licensing, inspection, and regulation of food service establishments located in retail food stores as defined in K.S.A. 36-501. ERO 32 also transferred specific powers, duties and functions in K.S.A. 65-619 through 65-687 relating to the licensing, inspection and regulation of food service establishments located in retail food stores (K.S.A. 74-581). Senate Bill 584 transferred all the powers, duties and functions under the Kansas Food Service and Lodging Act, K.S.A. 36-501 *et seq.* concerning food service to the KDA, effective October 1, 2008.
2. **Definitions.**
 - 2.1 County refers to Sedgwick County, Kansas.
 - 2.2 Kansas Food Service and Lodging Act refers to that act which is published at K.S.A. 36-501 *et seq.*, and amendments thereto, and rules and regulations adopted thereunder.
 - 2.3 Food service establishment means any place in which food is served or is prepared for sale or service on the premises or elsewhere. Such term shall include, but not be limited to, fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tea room, sandwich shop, soda fountain, tavern, private club, roadside stand, industrial-feeding establishment, catering kitchen, commissary and

any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge (K.S.A. 36-501(e)).

2.4 Kansas Food Code refers to the food code adopted in K.A.R. 4-28-8 through 4-28-16.

2.5 Regulatory Staff means LOCAL AGENCY staff who perform inspections pursuant to this contract.

3. **KDA agrees to:**

3.1 Designate and accept the LOCAL AGENCY as the agent of the KDA to provide inspection and regulatory services as necessary for food service establishments located in the county as required under the Kansas Food Service and Lodging Act.

3.2 Provide consultation, training opportunities and program evaluation services to the LOCAL AGENCY to assist in improving the provided regulatory services and to protect the health of consumers.

3.3 Pay the LOCAL AGENCY compensation for such food service establishment inspections and regulatory services an amount equal to 80% of the license and application fees received from food service establishments in the county served by the LOCAL AGENCY. All expenditures from the Food Safety Fund shall be made in accordance with appropriation acts upon warrants of the Director of Accounts and Reports issued pursuant to vouchers approved by the Secretary of KDA, or the Secretary's designee, as provided in K.S.A. 36-512. All payments will be made quarterly and shall be initiated on October 15, 2009, and on the fifteenth day of the first month after the start of a new quarter (January 15, April 15, and July 15) thereafter for the term of this contract.

3.4 Provide an annual performance standards report addressing the requirements in section 4 of this contract.

4. In consideration of the above, the **LOCAL AGENCY** agrees to:

4.1 **Inspection Staff.** Provide adequate number of trained staff to maintain food service establishment inspection services in the county consistent with KDA Division of Food Safety and Lodging. Maintain at least one (1) full time employee (FTE) or FTE equivalent dedicated to food safety and continue to maintain a satisfactory number of full time employees to adequately fulfill the necessary regulatory services. The recommended ratio of full time employees to establishments is 1:300. Adequate and trained regulatory staff shall include, but not be limited to, the following:

4.1.1 All new Regulatory Staff shall satisfactorily complete field training as

prescribed by the KDA Division of Food Safety and Lodging.

- 4.1.1 All new Regulatory Staff shall satisfactorily complete the Kansas Level I Training Plan within two (2) years of hire.
 - 4.1.2 All Regulatory Staff shall successfully complete standardization certification within the timeframe specified in the KDA Kansas Level I Training Plan and every three years thereafter.
 - 4.1.3 All Regulatory Staff shall satisfactorily complete at least ten (10) contact hours of continuing education during the contract year. Documentation of contact hours shall be submitted to the KDA Division of Food Safety and Lodging quarterly with the information required in section 4.8 of this contract.
 - 4.1.4 All newly hired Regulatory Staff shall have earned at least a Bachelor's Degree of Science in a biological or physical science. At KDA's discretion related work experience may be substituted for education.
 - 4.1.5 All Regulatory Staff shall participate in training conducted by KDA, or approved by KDA prior to the training.
 - 4.1.6 The LOCAL AGENCY will provide such other staff related assurances and training as requested by the KDA Division of Food Safety and Lodging.
 - 4.1.7 The LOCAL AGENCY will ensure that inspection staff who only conduct food service inspections on a part time or back-up basis must meet the requirements stated in the KDA policy regarding Maintenance of Inspector Number implemented on December 16, 2008.
- 4.2 **Routine Inspections.** Provide inspection and regulatory services for all food service establishments as required by the Kansas Food Service and Lodging Establishment Act and in accordance with the KDA Division of Food Safety and Lodging as follows:
- 4.2.1 To provide inspections which identify uncontrolled hazards and critical risk factors.
 - 4.2.2 To fill out inspection reports that completely and accurately document food safety conditions and compliance in the food service establishment.
 - 4.2.3 Provide at least one (1) annual inspection between July 1, 2010, and June 30, 2011, per licensed food service establishment, as required by K.S.A. 36-505.

- 4.2.4 Conduct at least two (2) annual inspections of all participating schools as required by Public Law 108-265 Amended section 9(h) of the Richard B. Russell National School Lunch Act.
- 4.2.5 To provide professional inspection equipment, including test strips, 35 mm or digital camera, digital thermometer or thermocouple, flashlight and hair restraints.
- 4.3 **Non-Routine Inspections and Investigations.** Conduct non-routine inspections and investigations as follows:
 - 4.3.1 All plan reviews and pre-licensing inspections.
 - 4.3.2 All consumer complaint investigations.
 - 4.3.3 All foodborne illness investigations. Foodborne illness investigations shall be conducted in accordance with KDA and or KDHE Epidemiological Services (Epi) policy and procedures. When a foodborne illness outbreak occurs at a food establishment, a HACCP inspection shall be conducted by HACCP trained staff as directed by KDA or KDHE Epi. If adverse conditions are documented during an investigation of an alleged foodborne illness, the LOCAL AGENCY may initiate appropriate enforcement actions as set forth in section 4.5 of this contract.
 - 4.3.4 Follow up inspections conducted after a routine or non-routine inspection or investigation.
- 4.4 **Reports and forms.**
 - 4.4.1 All inspection reports and other documentation shall be on the appropriate reporting forms provided by KDA, as directed by the KDA Division of Food Safety and Lodging.
 - 4.4.2 All inspection reports and other required documentation shall be submitted to the KDA on a weekly basis.
 - 4.4.3 The LOCAL AGENCY shall submit completed inspection reports and other documentation to KDA electronically using the inspection software pursuant to section 4.5.
- 4.5 **Enforcement Actions.** The LOCAL AGENCY shall initiate appropriate enforcement actions necessary to minimize the recurrence of uncontrolled hazards and critical risk factors as directed and approved by the KDA Division of Food Safety and Lodging, such as:

- 4.5.1 On-site corrective action of risk factor violations of the Kansas Food Code; offering a Risk Control Plan; issuing a Notice of Non-compliance; requesting voluntary closure of a facility; requesting voluntary destruction of adulterated or misbranded food products; and embargoing product upon prior authorization from KDA when a product reasonably constitutes a threat to public safety.
- 4.5.2 Requesting administrative review from KDA in accordance with the KDA Division of Food Safety and Lodging enforcement policies.
- 4.5.3 The LOCAL AGENCY will direct any request for a hearing or other legal process to the KDA Division of Food Safety and Lodging. Any legal action shall be determined and administered by the KDA.
- 4.5.4 Upon request by KDA, The LOCAL AGENCY shall make its personnel and resources available to provide relevant testimony, photo documentation, and other resources necessary for the prosecution of agency actions.
- 4.5.5 Enforcement action initiation by the LOCAL AGENCY does not include any enforcement action that require assessment of civil penalties; closure, other than voluntary closure; the denial, modification, suspension or revocation of the food service establishment license; or publication of inspection reports or enforcement action.
- 4.6 Cooperate with investigations and surveys or program audits in order to evaluate and determine the effectiveness of the work and services being performed by the LOCAL AGENCY.
- 4.7 Submit any proposed system of grading or scoring of food-worker certification and food-handler certification to the KDA for review and approval before implementation thereof.
- 4.8 Provide the KDA a quarterly report (October 15, 2010, January 15, 2011, April 15, 2011, and July 15, 2011) indicating the total number of inspections, complaint investigations, disaster investigations, HACCP inspections, Risk Control Plans and any other program activities as requested by the KDA Division of Food Safety and Lodging. Quarterly reports shall be submitted on the forms provided by the KDA or through electronic submission. All training activities provided by the LOCAL AGENCY shall be documented and reported to KDA at least quarterly.
- 4.9 Use funds allocated to the LOCAL AGENCY for the purpose of regulatory work as required herein. Carry-over of funds to the next fiscal year will be allowed with written permission from the KDA prior to the end of the contract year. The

LOCAL AGENCY may claim indirect costs at 15% of the amount paid hereunder. The LOCAL AGENCY shall submit quarterly budgetary reports (October 15, 2010, January 15, 2011, April 15, 2011, and July 15, 2011) to the KDA Division of Food Safety and Lodging Contract Manager regarding the use of inspection funds provided as compensation for food service establishment inspections. Quarterly reports shall be submitted in a format approved by the KDA.

5. It is further agreed by the parties:

- 5.1 The LOCAL AGENCY shall repeal all ordinance, regulations and/or resolutions related to food service establishments required to be licensed by the KDA and cease collection of all fees assessed thereunder. This paragraph shall not prohibit the adoption of any ordinance, regulation and/or resolutions solely related to food service worker training or food service manager training, provided that such training shall be coordinated and approved by the KDA. Any request for exception to this paragraph must be submitted in writing to the Secretary of KDA or the Secretary's designee.
- 5.2 **Media and legislative contact.** The LOCAL AGENCY shall refer to KDA any and all media or legislative inquiries about food safety inspections performed under contract with KDA. The LOCAL AGENCY shall notify the KDA upon receipt of any such contact.
- 5.3 **Open records requests.** All records generated pursuant to this contract are the property of KDA and any requests for information and records shall be handled by KDA. Requests for open records can be submitted at the KDA website, www.ksda.gov.
- 5.4 The provisions found in Contractual Provisions Attachment (Form DA-146a), which is attached hereto, are hereby incorporated in this contract.
- 5.5 The KDA and the LOCAL AGENCY will carry out joint inspections and joint activities as may be appropriate to develop training, promote coordination, and protect the public health.
- 5.6 **Nonperformance.** If the LOCAL AGENCY does not perform the regulatory services under this contract or if this contract is terminated, the KDA may, at its sole discretion, perform said services for the LOCAL AGENCY and be entitled to all reasonable costs, expenses and/or reimbursement for said services to be paid to the KDA by the LOCAL AGENCY. Reimbursement will be determined based on the current license fee and the number of establishments not inspected by LOCAL AGENCY during the state fiscal year.
- 5.7 **Termination.** This contract shall terminate on the 30th day of June, 2011, unless terminated at an earlier date. This contract may be terminated by either party by

5.8 **Invalidity or illegality of any part.** If any provision or application of this contract is held invalid or illegal, the invalidity or illegality shall not affect other provisions or applications of this agreement, which can be given effect without the invalid or illegal provision or application, and to this end, the provisions of the contract are declared to be severable.

5.9 The signatories to this contract have the authority to bind the parties to the terms of this contract.

Division of Food Safety and Lodging
109 SW 9th Street- 3rd Floor
Topeka, KS 66612

Date _____

City of Wichita Date

City Clerk Date

APPROVED AS TO FORM:

Wayne E. Reisinger / JR
Director of Law and City Attorney Date

Address to send KDA warrants:
City of Wichita
1900 E 9th
Wichita, KS 67214-3115
FEIN: 48-6000653

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 1 day of July , 2010.

1. **Terms Herein Controlling Provisions** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 76-101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

City of Wichita
City Council Meeting
June 22, 2010

TO: Mayor and City Council

SUBJECT: Westar Construction Agreement and Agreement for Electric Service
(All Districts)

INITIATED BY: Water Utilities

AGENDA: Consent

Recommendation: Approve a construction agreement and an agreement for electric service.

Background: Since the early 1950s, to insure the highest level of electric service reliability, Water Utilities has owned, operated, and maintained an overhead power line system (OHPL), associated with the City's raw water supply wells located in the Equus Beds. Water Utilities currently purchases the power from Westar to run its existing infrastructure.

Analysis: Phase II of the ASR Project includes a 30 MGD Water Treatment Plant and 60 MGD Intake Structure, both lying within Westar's service territory. Westar's current infrastructure is not equipped to provide the power required to run the processes at these facilities and must be upgraded. This will include two new substations and a 138 kV transmission line, and must be completed by March 31, 2011. This upgrade is covered under the construction agreement and will be sufficient to provide power to future expansions and phases of the ASR project. The agreement for electric service ensures that Westar will supply the City with the electric energy required to operate the facilities at the new Water Treatment Plant, and the City will only purchase electric energy for this site from Westar. The term of the agreement is for five years and annually thereafter.

Financial Considerations: The cost of constructing the two substations, transmission line, taps and meter, including right of way is estimated to be \$5,884,040. Twenty five percent of this estimate is due within 30 days of the execution of this agreement. Fifty percent of the estimate is due within six months of the execution of the agreement. The remainder of the cost will be calculated after construction is complete, and due 30 days after the submission of the final invoice. The agreement for electric service sets the rates and charges pursuant to Westar's applicable Electric Rate Schedule and General Terms and Conditions. Funding for this is available in Capital Improvement Program W-549-12, Water Supply Project, ASR Phase II.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing reliable, compliant and secure utilities.

Legal Considerations: The Law Department has reviewed the agreements and approved them as to legal form.

Recommendations/Actions: It is recommended that the City Council approve the construction agreement, agreement for electric service with Kansas Gas and Electric Company d/b/a Westar, and authorize the necessary signatures.

Attachments: Construction agreement and agreement for electric service.

**CONSTRUCTION AGREEMENT
BETWEEN
KANSAS GAS AND ELECTRIC COMPANY
And
THE CITY OF WICHITA, KANSAS**

THIS CONSTRUCTION AGREEMENT ("Agreement") is made and entered into this 4th day of June, 2010, by and between the City of Wichita, Kansas ("Customer") and Kansas Gas and Electric Company, a Kansas corporation, d/b/a Westar Energy ("Company"). Each of Customer and Company may also be referred to individually as "Party" or collectively as "Parties."

WHEREAS, contemporaneously with the execution of this Agreement, the Parties entered into an Electric Service Agreement dated March 31, 2011 (Electric Agreement);

WHEREAS, Customer and Company have negotiated an arrangement whereby Company will construct a 138 kV metering station, hereinafter referred to as ("Bentley East"), which will be on Customer's property and a 138 kV overhead transmission line which may be on Customer's property in accordance with the terms and conditions set forth below;

WHEREAS, in exchange for Company constructing Bentley East adjacent to Customer's 138 kV substation on Customer's property and constructing a 138 kV overhead transmission line that may be on Customer's property, Customer will grant Company an easement on and right-of-way to Customer's property. Customer will construct, own, and operate its 138-12 kV substation complete with high side breakers, 138-12 kV transformers, switchgear, and all associated equipment.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

1. Customer agrees to grant Company an easement for location of Bentley East for Customer's Aquifer Storage and Recovery Phase II located at 11501 North 119th Street West, Sedgwick, Kansas, including a right-of-way to build, rebuild, maintain, alter, repair, operate and remove the necessary transmission and related equipment, in the form set forth in Exhibit A (Plant Easement), a copy of which is attached hereto. The Parties acknowledge and agree that Company shall have no obligation under this Agreement until Customer has executed the Plant Easement.
2. Customer represents and warrants to Company that Customer owns the real property described in the Plant Easement and set aside for rights of way and that such real property is suitable for construction, maintenance and occupancy contemplated herein with regard to the Aquifer Storage and Recovery switching station as defined in Section 3 below. If the Plant Easement is not in the condition warranted, Customer shall defend, indemnify and hold Company harmless from any and all liability arising from or in connection with, or relating to, the condition of the Plant Easement, including, without

limitation, any costs of environmental remediation which may be required by current or future laws, regulations or negotiated requirements of any federal, state or local governmental entity having jurisdiction over such remediation. Customer's duty hereunder to defend, indemnify and hold Company harmless, shall not extend to any condition of the Plant Easement, including, without limitation, environmental contamination, caused by, or resulting from the activities of Company or its employees, agents, and contractors. Responsibility for any such condition on the Plant Easement, or the adjacent property of Customer or a third party, which is caused by, or results from the activities of Company, or its employees, agents and contractors, shall remain with Company, and Customer shall be absolved of any and all liability otherwise stated herein with regard to any such condition.

3. Subject to Customer's execution of the Plant Easement, Company agrees to construct a new 138 kV electric transmission line, 138 kV switching station, hereinafter referred to as ("Bentley West"), and Bentley East to serve electric load located at Customer's Aquifer Storage and Recovery Phase II. All Westar owned substation and transmission facilities will be designed and constructed to the latest NESC edition. Design shall be in accordance with all applicable codes and specifications in effect at the time of design. Company has sole responsibility for the design specifications.

4. The Parties agree that construction of the transmission and switching facilities shall be performed in accordance with Company's construction standards, which shall be in accordance with Good Utility Practice. "Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice to the exclusion of all others, but rather to be the practice then generally accepted having due regard for, among other things, contractual obligations, requirements of governmental authorities, operating rules or procedures of transmission operators, reliability councils, or other existing market conditions. Company will select and provide (or cause to be provided) all materials and work and will supervise the construction of the transmission and switching facilities.

5. Upon installation of the equipment, Company shall own and maintain the Equipment located on the primary side of the electric meter located near the Aquifer treatment plant at 11501 North 119th Street West, Sedgwick, Kansas.

6. Company shall comply with any and all federal, state or local statutes, regulations, ordinances, or codes applicable to Company and the work to be performed under this Agreement.

7. The scope of the work performed under this Agreement excludes the installation of a 138 kV substation, 12 kV equipment, or any non-standard or decorative equipment. All site preparation work and any additional easements and shall be Customer's sole responsibility.

8. Customer agrees to pay actual construction cost of the 138 kV overhead transmission line, Bentley West, Bentley East, and related Equipment. An estimate of construction cost is set forth in Exhibit B, a copy of which is attached hereto.

9. The Parties agree that the cost for the construction of the 138 kV overhead transmission line, Bentley West, Bentley East, and related Equipment is only an estimate. Customer shall pay Company 25% of the estimated cost of the construction of the 138 kV overhead transmission line, Bentley West, Bentley East, and related Equipment within 30 days of the execution date of this Agreement. Customer shall pay Company 50% of the estimated cost of the construction of the 138 kV overhead transmission line, Bentley West, Bentley East, and related Equipment within six months of the execution date of this Agreement. Customer shall pay Company the remainder of the cost, after the actual cost has been calculated, within 30 days after receipt of the final invoice evidencing the completion of the construction of the 138 kV overhead transmission line, Bentley West, Bentley East, and related Equipment.

10. Customer has the right, at its sole expense and during the normal working hours of Company, to examine Company's records to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be promptly made. No adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of 60 days from the rendition thereof.

11. Customer anticipates that functional testing and start-up of its Aquifer Storage and Recovery Phase II will begin on or around March 1, 2011. Company acknowledges the importance of this project and agrees to use commercially reasonable efforts to complete work as near to the March 1, 2011 date, as possible. However, Westar's estimated completion date is identified as on or before March 31, 2011. Customer agrees to provide a non-binding construction schedule to Company on or before July 1, 2010. In the event that (1) Customer fails to provide such schedule to Company on or before August 1, 2010, (2) construction of the Aquifer Storage and Recovery Phase II becomes 30 or more days behind such schedule, or (3) Customer publicly announces a delay of the in-service date of its Aquifer Storage and Recovery Phase II in excess of 30 days, then, in any of such events, Company will have the right to demand payment of the full amount of its costs incurred to such date including the cost of any equipment ordered for the project for which the Company will be required to pay and which Company is unable to use elsewhere in its operations without the incurrence of additional expense. In the event of such notice given pursuant to this paragraph, Customer agrees to pay such amount to Company within 30 days of the receipt of a written demand for such payment.

12. Company agrees to provide a non-binding construction schedule to Customer on or before July 1, 2010. Company also agrees to provide Customer periodic updates concerning the status of the construction of the 138 kV overhead transmission line, Bentley West, Bentley East, and related Equipment.

13. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, A PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT. IT IS THE INTENT OF THE PARTIES THAT, EXCEPT AS TO ACTS OF WILFULL, WANTON OR INTENTIONAL MISCONDUCT, THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the date above set forth.

The CITY OF WICHITA, KANSAS

KANSAS GAS AND ELECTRIC
COMPANY

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

EXHIBIT A

**WESTAR SUBSTATION EASEMENT AND
WESTAR ACCESS AND TURN AROUND EASEMENT
LEGAL DESCRIPTIONS
ASR TREATMENT PLANT ADDITION
AN ADDITION TO SEDGWICK COUNTY, KANSAS
(36-07685-05A-6385) (February 18, 2010)**

WESTAR ACCESS AND TURN AROUND EASEMENT

AN EASEMENT FOR ACCESS AND TURN AROUND DESCRIBED IN TWO PARTS AS FOLLOWS:

PART ONE

COMMENCING AT THE NORTHEAST CORNER OF LOT 2, BLOCK 1, ASR TREATMENT PLANT ADDITION, AN ADDITION TO SEDGWICK COUNTY, KANSAS; THENCE BEARING S00°23'48"E, A DISTANCE OF 43.09 FEET TO THE POINT OF BEGINNING; SAID POINT OF BEGINNING ALSO THE BEGINNING OF A CENTERLINE OF A 20.00 FOOT WIDE ACCESS EASEMENT; THENCE BEARING N90°00'00"W, A DISTANCE OF 1,019.18 FEET; THENCE ALONG A CURVE TO THE LEFT (TANGENT), HAVING A RADIUS OF 200.00 FEET, A CHORD BEARING OF S68°17'13"W, A CHORD DISTANCE OF 147.98 FEET AND THROUGH A CENTRAL ANGLE OF 43°25'34", AN ARC DISTANCE OF 151.59 FEET; THENCE BEARING S46°34'26"W, A DISTANCE 56.89 FEET; THENCE ALONG A CURVE TO THE LEFT (TANGENT), HAVING A RADIUS OF 115.00 FEET, A CHORD BEARING OF S23°17'13"W, A CHORD DISTANCE OF 90.93 FEET AND THROUGH A CENTRAL ANGLE OF 46°34'26", AN ARC DISTANCE OF 93.48 FEET; THENCE BEARING S00°00'00"W, A DISTANCE OF 303.37 FEET; THENCE ALONG A CURVE TO THE RIGHT (TANGENT), HAVING A RADIUS OF 50.00 FEET, A CHORD BEARING OF S45°00'00"W, A CHORD DISTANCE OF 70.71 FEET AND THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC DISTANCE OF 78.54 FEET; THENCE BEARING N90°00'00"W, A DISTANCE OF 361.97 FEET; THENCE ALONG A CURVE TO THE RIGHT (TANGENT), HAVING A RADIUS OF 50.00 FEET, A CHORD BEARING OF N45°00'00"W, A CHORD DISTANCE OF 70.71 FEET AND THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC DISTANCE OF 78.54 FEET; THENCE BEARING N00°00'00"E, A DISTANCE OF 115.31 FEET TO THE END OF THE CENTERLINE OF THE 20.00 FOOT WIDE ACCESS EASEMENT. (45,177.32 square feet or 1.04 acres)

(Exhibit A continued on next page)

EXHIBIT A continued

TOGETHER WITH

A PORTION OF LOT 2, BLOCK 1, ASR TREATMENT PLANT ADDITION, AN ADDITION TO SEDGWICK COUNTY, KANSAS DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 2, BLOCK 1, ASR TREATMENT PLANT ADDITION, AN ADDITION TO SEDGWICK COUNTY, KANSAS; THENCE BEARING N89°42'44"E, A DISTANCE OF 861.79 FEET; THENCE BEARING S00°00'00"W, A DISTANCE OF 259.85 FEET TO THE POINT OF BEGINNING; THENCE BEARING N90°00'00"E, A DISTANCE OF 100.00 FEET; THENCE BEARING S00°00'00"W, A DISTANCE OF 140.00 FEET; THENCE BEARING N90°00'00"W, A DISTANCE OF 140.00 FEET; THENCE BEARING N00°00'00"E, A DISTANCE OF 140.00 FEET; THENCE BEARING N90°00'00"E, A DISTANCE OF 40.00 FEET TO THE POINT OF BEGINNING. (19,600 square feet or 0.45 acres)

PART TWO

COMMENCING AT THE NORTHWEST CORNER OF LOT 1, BLOCK 1, ASR TREATMENT PLANT ADDITION, AN ADDITION TO SEDGWICK COUNTY, KANSAS; THENCE BEARING N89°43'23"E, A DISTANCE OF 55.00 FEET TO THE POINT OF BEGINNING. SAID POINT OF BEGINNING ALSO THE BEGINNING OF A CENTERLINE OF A 20.00 FOOT WIDE ACCESS EASEMENT; THENCE BEARING S00°22'33"E, A DISTANCE OF 1,405.00 FEET TO THE POINT OF TERMINATION. (27,809.33 square feet or 0.64 acres)

WESTAR SUBSTATION EASEMENT

A SUBSTATION EASEMENT DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 2, BLOCK 1, ASR TREATMENT PLANT ADDITION, AN ADDITION TO SEDGWICK COUNTY, KANSAS; THENCE BEARING N89°42'44"E, A DISTANCE OF 861.79 FEET; THENCE BEARING S00°00'00"W, A DISTANCE OF 149.85 FEET TO THE POINT OF BEGINNING; THENCE BEARING N90°00'00"E, A DISTANCE OF 100.00 FEET; THENCE BEARING S00°00'00"W, A DISTANCE OF 110.00 FEET; THENCE BEARING S90°00'00"W, A DISTANCE OF 100.00 FEET; THENCE BEARING N00°00'00"E, A DISTANCE OF 110.00 FEET TO THE POINT OF BEGINNING. (11,000 square feet or 0.25 acres)

(End of Exhibit A)

EXHIBIT B

Estimate of Construction Costs

Description	Costs
<u>Substations</u>	
New Bentley West + Bentley East (both stations are required)	
Construct new Bentley West with line circuit switchers on a new site adjacent to the existing Evans- Halstead 138 kV line. This station will be built to 2000 Amp capacity. The 138 kV radial line to serve the City substation will not be auto-sectionalizing under this scope.	
Construct new Bentley East directly adjacent to WWU substation. It is assumed the City will provide the required land, grading and permits for Bentley East.	
Cost includes land, site prep, surveys, equipment, labor and all applicable overheads.	
Sub Total Substations→	\$ 2,364,040
<u>Transmission Line</u>	
Actual routing to be determined based on success of Right of Way activities. The proposed route would run generally south and east from Bentley West to Bentley East which is located in or adjacent to the City's water treatment plant substation.	
Transmission Line Costs are:	
Design & Construction of single circuit line →	\$2,970,000
Right-of-Way →	\$ 300,000
Two taps to feed Bentley West from the 138 kV line →	<u>\$ 250,000</u>
Sub Total Transmission Line→	\$ 3,520,000
Total Estimated Project Construction Costs→	\$ 5,884,040

**KANSAS GAS AND ELECTRIC COMPANY
dba WESTAR ENERGY, INC.
AGREEMENT FOR ELECTRIC SERVICE**

THIS AGREEMENT, is made between **KANSAS GAS AND ELECTRIC COMPANY dba WESTAR ENERGY, INC.**, hereinafter referred to as "Company", and **CITY OF WICHITA**, hereinafter referred to as "Customer".

WITNESSETH: That

1). Subject to all the terms and conditions of this Agreement, Company agrees to supply and Customer agrees to purchase from Company all electric energy requirements, including generation, transmission and distribution for its equipment installed or to be installed at its **Aquifer Storage and Recovery Phase II** located at **11501 N 119th St W, Sedgwick, KS 67235**, upon the terms and conditions and at the rates and charges due and payable therefore pursuant to the Company's applicable Electric Rate Schedule **MGS**, and upon the terms and conditions set forth in the Company's General Terms and Conditions, all as now on file with The State Corporation Commission of The State of Kansas, or as Company's Electric Rate Schedules and General Terms and Conditions are reissued and made effective from time to time as provided by law. Such energy shall be three phase, four wire, 60 cycle, alternating current, at approximately **138 kV** volts.

2). Company agrees to extend and maintain its lines to the premises of Customer and to install all transformers, switches, lightning arrestors, meters, recording devices and other apparatus necessary for the purpose of delivering and measuring the energy at the point of delivery, which shall be at **the metering station located adjacent to Customer owned substation.**, with customer's usage metered at **138 kV** volts.

Such facilities of Company shall be sufficient to satisfy Customer's maximum capacity requirement of **1,800 kW**, which shall constitute the Maximum Capacity hereunder. Customer will receive and pay for not less than **200 kW**. Customer shall notify Company of any anticipated substantial increase in capacity requirement not less than ninety (90) days prior to date of such increase, and adjustment in Maximum Capacity shall be made accordingly.

3). The term of this Agreement shall be **five (5)** years from the latter of an effective date of **March 31, 2011** or the first billing date following final execution by both parties, (referred to as primary period) and then from year to year thereafter unless either party shall notify the other in writing **ninety (90) days** prior to anniversary date of its desire to terminate this Agreement.

4). The provisions of the Agreement shall not be changed except in writing duly signed by Company and Customer, however, the Agreement is subject to valid order of legally constituted regulatory bodies having jurisdiction over the Company's sites.

5). This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

IN WITNESS WHEREOF, the parties here to have executed this Agreement.

CITY OF WICHITA

**KANSAS GAS AND ELECTRIC COMPANY
dba WESTAR ENERGY, INC.**

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

FOR COMPANY USE ONLY	
Account #	-

**KANSAS GAS AND ELECTRIC COMPANY
dba WESTAR ENERGY, INC.
AGREEMENT FOR ELECTRIC SERVICE**

THIS AGREEMENT, is made between **KANSAS GAS AND ELECTRIC COMPANY dba WESTAR ENERGY, INC.**, hereinafter referred to as "Company", and **CITY OF WICHITA**, hereinafter referred to as "Customer".

WITNESSETH: That

- 1). Subject to all the terms and conditions of this Agreement, Company agrees to supply and Customer agrees to purchase from Company all electric energy requirements, including generation, transmission and distribution for its equipment installed or to be installed at its **AquiferStorage and Recovery Phase II** located at **11501 N 119th St W, Sedgwick, KS 67235**, upon the terms and conditions and at the rates and charges due and payable therefore pursuant to the Company's applicable Electric Rate Schedule **MGS**, and upon the terms and conditions set forth in the Company's General Terms and Conditions, all as now on file with The State Corporation Commission of The State of Kansas, or as Company's Electric Rate Schedules and General Terms and Conditions are reissued and made effective from time to time as provided by law. Such energy shall be three phase, four wire, 60 cycle, alternating current, at approximately **138 kV** volts.
- 2). Company agrees to extend and maintain its lines to the premises of Customer and to install all transformers, switches, lightning arrestors, meters, recording devices and other apparatus necessary for the purpose of delivering and measuring the energy at the point of delivery, which shall be at **the metering station located adjacent to Customer owned substation.**, with customer's usage metered at **138 kV** volts.

Such facilities of Company shall be sufficient to satisfy Customer's maximum capacity requirement of **1,800 kW**, which shall constitute the Maximum Capacity hereunder. Customer will receive and pay for not less than **200 kW**. Customer shall notify Company of any anticipated substantial increase in capacity requirement not less than ninety (90) days prior to date of such increase, and adjustment in Maximum Capacity shall be made accordingly.
- 3). The term of this Agreement shall be **five (5)** years from the latter of an effective date of **March 31, 2011** or the first billing date following final execution by both parties, (referred to as primary period) and then from year to year thereafter unless either party shall notify the other in writing **ninety (90) days** prior to anniversary date of its desire to terminate this Agreement.
- 4). The provisions of the Agreement shall not be changed except in writing duly signed by Company and Customer, however, the Agreement is subject to valid order of legally constituted regulatory bodies having jurisdiction over the Company's sites.

5). This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

IN WITNESS WHEREOF, the parties here to have executed this Agreement.

CITY OF WICHITA

KANSAS GAS AND ELECTRIC COMPANY
dba WESTAR ENERGY, INC.

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

FOR COMPANY USE ONLY	
Account #	—

City of Wichita
City Council Meeting
June 22, 2010

TO: Mayor and City Council

SUBJECT: Change Order No. 9: Washington at Waterman Intersection Improvement
(District I)

INITIATED BY: Department of Public Works

AGENDA: Consent

.....

Recommendation: Approve the change order.

Background: On February 3, 2009, the City Council approved a construction contract with Cornejo & Sons, Inc. for improvements to the intersection of Washington and Waterman. Additional work items have since been identified that were not known at the time the project was let.

Analysis: The additional work was: increased pavement removal and replacement at the Washington/Waterman and Washington/Lewis intersections to improve drainage; additional temporary pavement at the Washington/Waterman intersection to maintain traffic during construction; and a longer retaining wall at the southwest corner of the Washington/Waterman intersection to accommodate recent modifications to the existing property. The individual work items are listed on the attached change order document.

All work will be done at the bid unit prices. Due to County participation in this project, the costs have been reviewed with and will be funded by the County.

Financial Considerations: The total cost of the additional work is \$18,689 with the total paid by Sedgwick County. The original contract amount is \$2,601,133. This change order plus previous change orders total \$106,738 which represents 4.10% of the original contract amount.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving traffic to and from the Intrust Bank Arena.

Legal Considerations: The Law Department has approved the change order as to legal form. The change order amount is within the 25% of construction contract cost limit set by City Council policy.

Recommendation/Action: It is recommended that the City Council approve the change order and authorize the necessary signatures.

Attachments: Change order.



May 19, 2010

PUBLIC WORKS-ENGINEERING

CHANGE ORDER**To: Cornejo & Sons****Project: Washington, Lewis to English; SE
Waterline Phase C; SS Modifications****Change Order No.: 9****Project No.: 472-84657/448-90417/468-84565
OCA****Purchase Order No.: 930134****No.: 706997/751422/633806/633807/620532****CHARGE TO OCA No.: 706997 = (\$60.00)
751422 = \$18,749.30****PPN: 208462/485313/758004/759005/668650****Please perform the following extra work at a cost not to exceed \$18,689.30**

Additional Work: Additional work was required on the \$2.6M project and performed as directed by the Engineer. All work was performed at the bid unit prices. Below is a summary of final measured quantities.

Additional pavement removal and replacement was required on the east return of Washington at Waterman due to poor condition of the existing pavement and to improve drainage along the south curb line.

Additional pavement removal and replacement was required on the west return of Lewis at Washington due to providing improved drainage and transition to existing pavement.

Additional temporary asphalt pavement was required at the intersection of Washington and Waterman to maintain two-way traffic for sanitary and storm water work in the middle of the intersection.

Final measure of the retaining wall on the southwest corner of Washington and Waterman overrun by 22.5 feet.

Item	Negot'd/Bid	Qty	Unit Price		
<u>Extension</u>					
Underrun Measured Quantity Items (706997)					
Silt Fence	Bid	(40 lf) @	1.50	=	(\$60.00)
Overrun Measured Quantity Items (751422)					
Pvmt Removed	Bid	104.1 sy @	9.00	=	\$936.90
Concrete Pvmt (8") (RCVG)	Bid	46.4 sy @	46.00	=	\$2,134.40
Concrete Pavement (9")	Bid	49.9 sy @	59.00	=	\$2,944.10
Comb. Curb & Gutter (Type 1 or 2)	Bid	28.2 lf @	12.50	=	\$352.50
Edge Curb (Monolithic) (6")	Bid	20.2 lf @	4.50	=	\$90.90
Concr Pvmt (8") (Reinf) (Drive Entrances)	Bid	44.8 sy @	40.00	=	\$1,792.00
6" AC Temp. Pvmt (4" Bit Base)	Bid	338 sy @	18.00	=	\$6,084.00
Sidewalk Concrete Pvmt (4")	Bid	455.4 sf @	4.50	=	\$2,049.30
Retaining Wall	Bid	22.5 lf @	98.52	=	\$2,216.70
Protection Curb	Bid	54 lf @	2.75	=	\$148.50

TOTAL: \$18,689.30**CIP Budget Amt: \$1,611,742 (706997); \$7,325,000 (751422);
\$1,150,000 (633806); \$364,600 (633807); \$75,000 (620532)
\$37,872,124.80 (792422)****Consultant: PEC****Exp. & Encum. To Date: \$1,607,155.80 (706997)
\$6,940,776.17 (751422)****CO Amount: \$18,689.30****Unencum. Bal. After CO: \$ 4,646.20 (706997)
\$365,474.53 (751422)****Original Contract Amt.: \$2,601,132.93****Current CO Amt.: \$18,689.30****Amt. of Previous CO's: \$88,049.01****Total of All CO's: \$106,738.31****% of Orig. Contract / 25% Max.: 4.10%****Adjusted Contract Amt.: \$2,707,871.24**

Recommended By:

Greg Baalman, P.E.
Construction Engineer

Date

Approved:

Contractor

Date

Approved:

Jim Armour, P.E.
City Engineer

Date

Approved:

Chris Carrier, P.E.
Director of Public Works

Date

Approved:

Robert Layton

Date

City of Wichita
City Council Meeting
June 22, 2010

TO: Mayor and City Council

SUBJECT: Change Order: 2009 Contract Street Maintenance Project
(District VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

.....

Recommendation: Approve the change order.

Background: On September 11, 2007, the City Council approved a budget for improvements in Sycamore Park, located near 13th and West Street that included repair of a parking lot. On June 19, 2009, the City Council approved a construction contract with Cornejo & Sons, Inc. for pavement repairs at various locations.

Analysis: The 2009 contract street maintenance project includes the types of work needed for the Sycamore Park parking lot repairs. The price for the work bid under the 2009 contract street maintenance project was very favorable and provides the opportunity to repair the Sycamore Park parking lot at approximately 15% less than a previous project bid separately for a different parking lot.

A change order has been prepared to add the Sycamore Park parking lot work to the contract street maintenance project. Funding is available within the Sycamore Park project budget.

Financial Considerations: The total cost of the additional work is \$57,647 with the total paid by City General Obligation bonds, budgeted in the Sycamore Park project. The original contract amount is \$949,600. This change order represents 6.07% of the original contract amount. This will result in a reduction in the cost of the park improvement project.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing needed park maintenance.

Legal Considerations: The Law Department has approved the change order as to legal form. The change order amount is within the 25% of construction contract cost limit set by City Council policy.

Recommendation/Action: It is recommended that the City Council approve the change order and authorize the necessary signatures.

Attachments: Change order.

To: Cornejo**Project: 2009 Contract Maintenance Mill
and Overlay *& Rehab Ph 2****Change Order No.: 1****Project No.: 472-84790****Purchase Order No.: 930526****OCA No.: 132722****CHARGE TO OCA No.: 785114****PPN:****Please perform the following extra work at a cost not to exceed \$57,647.46****Additional Work:** Sycamore parking lot re-construction and drainage improvement.**Reason for Additional Work:** Parking lot was in extremely deteriorated shape and needed drainage improvement. Park department requested to make a change order to this project.

Item	Negot'd/Bid	Qty	Unit Price	Extension	
	BID	UNIT	UNIT PRICE	QUANTITIES	TOTAL
Measured Quantity Bid Items (785114) Sycamore Park Parking Lot					
4" AC Base Course (BM-2) (PG64-22)	377	ton	53.00	401.12	\$21,259.36
2" AC Surface Course (BM-2) (PG64-22)	190	ton	65.00	200.29	\$13,018.85
10" Asphalt Mat/Dirt Removed	1,649	sy	4.25	1,658.20	\$7,047.35
4" Crushed Rock on Tensar.	2,193	sy	5.00	1,631.10	\$8,155.50
7" Concrete Valley Gutter	432	sf	7.00	465.50	\$3,258.50
7" Concr. Approach	27	sy	51.00	27.40	\$1,397.40
Combined Curb & Gutter Repair	100	lf	16.00	100.00	\$1,600.00
Mono Curb & Gutter Repair	30	lf	10.00	47.00	\$470.00
4" Sidewalk Rem & Repl	50	sf	3.75	50.00	\$187.50
4" Yellow or White Pvmt Mrkgs (Thermopl.)	1,200	lf	0.50	756	\$378.00
Turn Arrow Pvmt Mrkgs (Thermopl.)(Handi-Cap Markings=2)	2	ea	437.50	2	\$875.00
TOTAL:				\$57,647.46	

CIP Budget Amount: \$280,000.00 (785114) Original Contract Amt.: \$949,600.00

Consultant: Staff

Current CO Amt.: \$57,647.46

Exp. & Encum. To Date: \$196,858.63 (785114)**Amt. of Previous CO's: \$0.00****Total of All CO's: \$57,647.46****CO Amount: \$57,647.46****% of Orig. Contract / 25% Max.: 6.07%****Unencum. Bal. After CO: \$25,493.91****Adjusted Contract Amt.: \$1,007,247.46**

Recommended By:

Greg Baalman, P.E.
Construction Engineer

Date

Approved:

Contractor

Date

Approved as to Form:

Gary Rebenstorf
Director of Law

Date

Approved:

Jim Armour, P.E.
City Engineer

Date

Approved:

Chris Carrier, P.E.
Director of Public Works

Date

By Order of the City Council:

Carl Brewer
Mayor

Date

Attest: _____
City Clerk



**DEPARTMENT OF LAW
INTEROFFICE MEMORANDUM**

TO: Karen Sublett, City Clerk
FROM: Gary E. Rebenstorf, Director of Law
SUBJECT: Report on Claims for May 2010
DATE: June 14, 2010

The following claims were approved by the Law Department during the month of May 2010.

AT&T	\$235.06
Frey, Sr., Robert	\$100.00**
Hoeck, George	\$247.98***
Kline, Vicki	\$1,603.92
McGinn, Mark	\$335.00

*City Manager Approval

** Settled for lesser amount than claimed

***Settled for more than amount claimed

cc: Robert Layton, City Manager
Kelly Carpenter, Director of Finance

Revised 6/14/2010

CITY OF WICHITA
City Council Meeting
June 22, 2010

TO: Mayor and City Council Members

SUBJECT: Settlement of Lawsuit

INITIATED BY: Law Department

AGENDA: Consent

Recommendation: Authorize payment of \$25,000 as a full settlement for all claims arising out of an automobile accident.

Background: This lawsuit arose from a July 7, 2006 automobile accident involving an animal control officer employed by the City. The driver of the other vehicle sustained personal injuries and medical expenses.

Analysis: The claimant has offered to accept a lump sum payment of \$25,000 as reimbursement of his medical expenses in the claim against the City and its employee. Because of the risk of an adverse judgment if it went to trial, the Law Department recommends acceptance of the offer. This is a settlement of a long disputed claim.

Goal Impact: Payment of the sum contributes to the City goal of providing a Safe and Secure Community. It provides certain resolution to a contingent liability.

Financial Considerations: Funding for this settlement payment is from the City's Tort Claims Fund.

Legal Considerations: The Law Department recommends acceptance of the offer of settlement.

Recommendations/Actions: It is recommended that the City Council authorize payment of \$25,000 as a full settlement of all possible claims which were made or could have been made in the claim.

Attachments: None.

Agenda Item No. XII-11

**City of Wichita
City Council Meeting
June 22, 2010**

To: Mayor and City Council

Subject: Acceptance of State Historic Preservation Grant to conduct South Central Neighborhood Building Survey (District I)

Initiated By: Metropolitan Area Planning Department

Agenda: City Council Consent

Recommendation: Accept the grant award and authorize the City Manager to sign the project agreement.

Background:

Each year the Kansas State Historic Preservation Office offers a competitive application process for Historic Preservation Fund matching grants to Certified Local Government (CLG) communities for qualified preservation projects. Wichita has been a CLG since 1979. The Historic Preservation Office applied for and has been notified that the City has been awarded a \$24,999.00 grant to pay Current Plans staff to survey 390 buildings in a portion of the South Central Neighborhood immediately south of Kellogg. The survey area is bounded by Kellogg on the north, the Arkansas River on the west, St. Francis Street on the east and Gilbert Street on the south.

Analysis: This survey will identify properties eligible for historic preservation financial incentives and lay the basic groundwork for future redevelopment in the area. Some re-investment is already occurring south of Kellogg because of the new arena and more will follow with the adoption of the Goody Clancy Downtown Master Plan. Having a building survey of this area already completed will fast track any projects that might require federal permits or use federal funds.

Financial Consideration: Although the application shows the required 40 percent match as “cash,” it is actually all staff time. As per the grant application instructions, paid staff time is documented as “cash” match rather than “in-kind” match. The Director of Planning, the Current Plans Manager and the Senior Management Analyst will oversee the project and their staff time will provide the match for the grant. This grant is consistent with the operating and capital budgets, and the local matching requirements are properly provided and consistent with City financial requirements. No additional funding is required of the City in order to accept this grant.

Goal Impact: The South Central Neighborhood survey will assist with the goal of creating Vibrant Neighborhoods, as well as promoting Economic Vitality.

Legal Consideration: Federal and State assurances have been provided, and the required public hearing was held in Topeka by the Kansas Historical Society On April 29, 2010. Its implementation will not impact local development plans, zoning, land use or licensing requirements. The grant agreement has been reviewed and approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council accept the grant award and authorize the City Manager to sign the agreement.

Attachment: Project Agreement between Kansas State Historic Preservation Office and City of Wichita.

PROJECT AGREEMENT

THIS AGREEMENT is hereby entered into this _____ day of _____, 2010 by and between the City of Wichita, Kansas, (hereinafter Subgrantee”), and the State of Kansas, Kansas Historical Society, Historic Preservation Office, (hereinafter “SHPO”).

WHEREAS, the Subgrantee has applied for and been awarded a \$24,999.00 Historic Preservation Fund grant from SHPO to undertake a project to survey Area 1 of the South Central Neighborhood of the Subgrantee’s community; and,

WHEREAS, the Historic Preservation Fund grant is funded by federal historic preservation funds appropriated by Congress for the purpose of carrying out its National Historic Preservation Act, as amended; and,

WHEREAS, in order to receive the grant funds, the Subgrantee must carry out its project activities in accordance with the Secretary of the Interior’s *Standards and Guidelines for Archeology and Historic Preservation*; and,

WHEREAS, the Subgrantee shall follow all requirements in the “Historic Preservation Grants Manual” prepared by the National Park Service, and the “Historic Preservation Fund (HPF) Grant Guide” prepared by SHPO; and

WHEREAS, the Subgrantee shall follow the conditions and requirements governing National Park Service grants; and,

WHEREAS, the parties desire to enter into an Agreement setting forth these and other requirements relating to the grant.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

I. WORK TO BE PERFORMED

a. Schedule

Subgrantee shall not begin work under the terms of this Agreement prior to May 26, 2010, and Subgrantee shall complete, expend funds, submit products, and request final reimbursement by June 30, 2011. Requests for extensions must be made thirty days prior to that end date. The following dates shall be used as a guideline for submission of products:

June 15, 2010	Consult with SHPO on scope of project and training on the KHRI online survey forms
September 1, 2010	Submit first batch of online survey forms
December 20, 2010	Submit second batch online surveys forms
March 1, 2011	Submit any remaining survey forms and associated maps

May 1, 2011 Submit draft historic context statement, update appendices of the Wichita Residential Resources 1870-1957, and submit article for possible publication in Kansas Preservation newsletter.

June 30, 2011 All remaining closeout materials submitted to SHPO.

b. Scope of Work

The Subgrantee shall use grant funds to implement the preservation activities identified below. The Subgrantee shall advise SHPO immediately of any problems that arise that impair its ability to meet its obligations under this Agreement.

The scope of work identified in this Agreement shall not be changed by the Subgrantee without prior written approval from SHPO. The Subgrantee shall conduct the project in following manner:

- (1) City of Wichita will appoint various staff as "surveyors" for purposes of this project;
- (2) Surveyors will do research and field surveys of the South Central Neighborhood of Wichita and will upload approximately 390 survey forms in to the Kansas Historic Resources Inventory (KHRI) online database along with all required accompanying materials including site plans and multiple photographs;
- (3) Surveyors will amend the Residential Resources 1870-1957, Wichita, KS MPDF (2007) by expanding the ethnic historic context, documentation of neighborhood development, architectural styles, and biographical information on architects and builders historically active in the city (this amendment will be formally presented to the Kansas State Historic Sites Board of Review when complete);
- (4) Surveyors will prepare a written survey report to include overall maps of the survey area and recommendations for potentially eligible individual properties and/or districts;
- (5) The Subgrantee shall provide regular monthly reports and a Completion Report as outlined in SHPO's State of Kansas "HPF Survey and Planning Grant Guide." The report shall be submitted within 30 days after the project work is completed. This final report shall accompany a brief article for *Kansas Preservation* newsletter outlining the results of the project.

c. Monthly Reports and Draft Submissions

The Subgrantee shall submit monthly reports to SHPO on the forms supplied by SHPO. Such reports shall be due on the tenth of the following month. Repeated failure to return monthly reports in a timely manner will jeopardize future grant funding. The Subgrantee shall provide a draft copy of any reports or publications to review before the final copy is prepared for submission or publication.

d. Project Spanning Two Fiscal Years

If parts of the grant project will be carried out during two federal fiscal years, the Subgrantee shall prepare a one-page progress report as of September 30 that covers both the project work and fiscal expenditures. Subgrantees are required to request reimbursement for all expenditures incurred in the first federal fiscal year no later than the following October 31.

e. Property Owner Agreement Letter

Prior to utilizing federal grant funds for preparing nominations for the National Register of Historic Places, a letter signed by the property owner agreeing to National Register nomination shall be submitted to SHPO.

II. PROJECT ACCOUNTING AND PAYMENTa. Total Project Cost

The total project cost is estimated to be \$42,261.00. Subgrantee shall be reimbursed 60% of project costs with grant funds, up to \$24,999.00 ("federal share"). Subgrantee shall pay for the remaining 40% of project costs, and Subgrantee's match shall not be less than \$16,666.00 ("Subgrantee's share").

b. Reimbursement Procedure

The federal funds shall be obtained by the Subgrantee by completing a discrete part of the project with its own funds, providing the products to SHPO and then requesting reimbursement for 60% of the cost. However, 10% of the federal funds requested will be withheld until satisfactory completion of all the Project Agreement conditions. No billing may be reimbursed at greater than 60%. The National Park Service requires that the costs of products which do not meet the relevant Secretary of Interior's *Standards* cannot be reimbursed.

c. Project Budget

		Match		In-Kind		Federal		Total
Salaries								
Administrator	\$	12450.00	\$	0.00	\$	0.00	\$	12450.00
Surveyor #1		0.00		0.00		5701.00		5701.00
Surveyor #2		0.00		0.00		1316.00		1316.00
Surveyor #3		0.00		0.00		1333.00		1333.00
Surveyor #4		0.00		0.00		1331.00		1331.00
Surveyor #5		0.00		0.00		1434.00		1434.00
GIS mapping		0.00		0.00		13884.00		13884.00
Assist. to Director		2667.00		0.00		0.00		2667.00
MAPD Director		2145.00		0.00		0.00		2145.00
Total	\$	17262.00	\$	0.00	\$	24999.00	\$	42261.00

No billing will be reimbursed without complete documentation for expenditures and complete products related to the billing as described below. The project products include:

1. Hard copy and electronic copies as needed of the amendment to the Residential Resources 1870-1957, Wichita, KS MPDF (2007) to accommodate acceptance of the amendment by the Kansas State Historic Sites Board of Review;

2. Approximately 390 online survey forms uploaded to <http://khri.kansasgis.org/> with all accompanying materials as outlined in the 2010 HPF survey requirements guide (provided separately) including all images in TIFF format on a compact disc;
3. Four copies of the final survey report (two of these may be electronic format submitted on two separate compact discs);
4. A completion report with accompanying *Kansas Preservation* newsletter article.

A maximum of five thousand dollars (\$5,000.00) in federal funds shall be reimbursed upon SHPO approval of the first 200 survey forms. A maximum of an additional five thousand dollars (\$5,000) in federal funds shall be reimbursed upon SHPO approval of the remaining survey forms (approximately 190 forms). A maximum of an additional five thousand dollars (\$5,000) in federal funds shall be reimbursed upon submission of the MPDF amendment. A maximum of an additional five thousand dollars (\$5,000) in federal funds shall be reimbursed upon the submission of a final survey report. The remaining four thousand nine hundred ninety-nine dollars (\$4,999.00) in federal funds shall be reimbursed upon submission of the completion report, and the required article for *Kansas Preservation* newsletter.

d. Billing Frequency

Billing shall be done as required by SHPO and must be directly related to the completion of a specified part or parts of the project with those products as listed above. Final payment, which shall be no less than 20% of the federal funds, will not be made by SHPO until the project reports and products have been turned in, examined, and found to meet the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation*.

e. Request for Reimbursement

The Subgrantee shall file requests for reimbursement on forms furnished by SHPO and accompanied by copies of the vouchers, payroll records, and whatever other documents such as canceled checks, toll call records, copy records, etc., that are necessary to substantiate the costs. (See HPF Grant Guide, Part 4.)

f. Documentation Required

The Subgrantee shall furnish copies of all project source documents, such as contracts, vouchers, payroll records, time sheets, invoices, canceled checks, etc., to SHPO. This includes supporting documentation for the Subgrantee's share, including in-kind services, as well as for the expenditures of the federal share.

g. SHPO's Responsibility

SHPO assumes no fiscal responsibility to the Subgrantee other than to pass through historic preservation funds as available for the performance of the project work.

III. PROJECT REPORTS

a. Copies of Publications

If any published documents are produced under the terms of this Agreement (such as public information pamphlets or walking tour brochures), the Subgrantee shall submit four copies of each to SHPO.

b. Right of SHPO Use

SHPO reserves the right to use and reproduce maps, survey forms, photographs, and other materials submitted by the Subgrantee in carrying out SHPO's survey, planning, and public education responsibilities.

c. Acknowledgment of Federal Assistance

The assistance of the National Park Service, Department of the Interior, will be acknowledged in any reports, publications, audiovisual productions, project literature, and at all public meetings and programs where the project is discussed or explained. The acknowledgment may be written as follows:

The (activity) which is the subject of this (type of publication) has been financed in part with Federal funds from the National Park Service, a division of the United States Department of the Interior, and administered by the Kansas Historical Society. The contents and opinions, however, do not necessarily reflect the view or policies of The United States Department of the Interior or the Kansas Historical Society.

d. Copyright

The Subgrantee is free to copyright any books, publications, audiovisual productions or other copyrightable materials developed as a result of this Agreement. However, any such copyrightable materials will be subject to a royalty free, nonexclusive, and irrevocable license throughout the world to SHPO and/or the United States Government to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes.

IV. RECORD RETENTION AND AUDIT EXAMINATION

a. Right of Access to Subgrantee's Records

The Subgrantee shall provide the right of access to any books, documents, papers, or other records which are pertinent to the Historic Preservation Fund grant to the Department of the Interior, the Comptroller General of the United States, the Kansas Historical Society or any of their duly authorized representatives to make an audit, examination, excerpts, or transcript.

b. Single Audit

The Subgrantee shall ensure that the federal funds received through this grant will be included in an audit base subject to the single audit requirements if required of the Subgrantee. Two copies of the audit results pertaining to this grant will be supplied to SHPO upon completion of the audit.

c. Responsibility to Repay Improperly Used Funds

If an audit or other examination should produce findings that funds were improperly expended by the Subgrantee, the Subgrantee has the sole responsibility for repaying those funds.

d. Subgrantee to Provide Needed Fiscal Data

The Subgrantee shall provide SHPO such fiscal information as it may need for federal or state budgetary or reporting purposes.

e. Approval of Expenditures

The Subgrantee shall not incur expenses on this project other than those included in the project budget approved by SHPO. Budget amendments may be requested by the subgrantee, but all proposed changes must be approved in writing by SHPO before the expenses are incurred.

f. Financial Management System

The Subgrantee shall have in place a financial management system, which meets the standards of the relevant OMB Circulars, A-21, A-87, A-102, A-110, A-122, A-128, or A-133.

g. Record Retainage

All project records must be retained by the Subgrantee for three (3) years from the date of submission of the final project completion report per 43 CFR 12.82.

V. PROHIBITION OF LOBBYING

a. Federal Requirements

The Subgrantee shall comply with the provisions of 18 USC 1913: "No part of the money appropriated by any enactment of Congress shall; in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or its Departments or agencies from communicating to Members of Congress at the request of any Member, or to Congress through the proper official

channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.” Thus, costs associated with activities to influence legislation pending before the Congress, commonly referred to as “lobbying,” are unallowable as charges to HPF-assisted grants, either on a direct or indirect cost basis.

VI. HIRING OF CONSULTANT

a. SHPO Approval Required

Any consultant or other person or entity hired for the purpose of performing work under this grant shall be subject to the approval of SHPO and shall be qualified to do the work. Subcontracting of any work performed under this Agreement must be approved in writing by SHPO.

b. Competitive Procurement

The Subgrantee shall provide SHPO with evidence that competitive procurement requirements for professional services and subcontracts have been met. The awarding of any contract to fulfill work under this grant shall be done competitively as required by OMB Circulars A-102 and A-110. Reference also the HPF Grant Guide

VII. TERMINATION OF CONTRACT

a. Basis of Termination

Failure on the part of the Subgrantee to observe the conditions of this agreement, and by reference, the requirements of the grants manuals of the National Park Service and SHPO, shall constitute just cause for terminating the project and reassigning the federal funds to other projects. A complete stoppage of work without prior approval by SHPO shall be grounds for termination of the project.

b. Process for Close Out

Under either circumstance, the project would be closed out in accordance with the requirements of the “HPF Survey and Planning Grant Guide.”

VIII. CIVIL RIGHTS ACT COMPLIANCE

a. Required Form

The Subgrantee shall sign and return to SHPO one copy of form DI-1350, “Assurance of Compliance, Title VI, Civil Rights Act of 1964.”

b. Subgrantee’s Obligations

The Subgrantee shall make available to the public Title VI and Section 504 nondiscrimination information. The following language shall be used:

This program receives Federal funds from the National Park Service. Regulations of the U.S. Department of the Interior strictly prohibit unlawful discrimination in departmental Federally Assisted programs on the basis of race, color, national origin, age or handicap. Any person who believes he or she has been discriminated against in any program, activity, or facility operated by a recipient of federal assistance should write to: Director, Office of Equal Opportunity, National Park Service, 1849 C Street, NWS, Washington, D.C. 20240.

IX. KANSAS HISTORICAL SOCIETY HELD HARMLESS FROM CLAIMS AGAINST SUBGRANTEE

a. Claims are Responsibility of Subgrantee

The Subgrantee agrees that the SHPO and all of their officers, agents and employees shall not be liable for claims on account of personal bodily injuries or death or on account of property damages arising out of the work to be performed by the Subgrantee hereunder and resulting solely from the negligent acts or omissions of the Subgrantee, its agents, employees and subcontractors. Such claims may be pursued in accordance with the provisions of the Kansas Tort Claims Act, K.S.A. 75-6101 et. seq.

X. AMENDMENT

a. Request

Either party may make a written request for changes to this Agreement.

b. Approval

Changes must be agreed to in writing by both parties.

STATE HISTORIC PRESERVATION
OFFICER

Date

Signature of Authorized
Representative of Subgrantee

Typed name and title of signatory

Date

The above instrument approved as to form
this 9th day of June, 2010
Gregory R. [Signature]
City Attorney

City of Wichita
City Council Meeting
June 22, 2010

To: Mayor and City Council
Subject: Payment for Sedgwick County Lab Renovations
Initiated By: Department of Finance
Agenda: Consent

Recommendation: Approve payment.

Background: On September 25, 2001, the City Council approved a memorandum of agreement with Sedgwick County regarding the consolidation of laboratory functions. The agreement consolidated certain laboratory functions performed by the City of Wichita Police Department.

Analysis: The memorandum of understanding provided for a payment of \$78,750 from the City to the County in 2002. In addition, the City agreed to transfer \$125,000 to the County to fund renovations of laboratory facilities at the County Regional Forensic Center. Equipment from the City of Wichita Police Department laboratory was also transferred to Sedgwick County plus two Police Chemist positions were shifted to the County.

All aspects of the 2001 agreement have been completed, except the transfer of \$125,000 to fund capital improvements at the County Regional Forensic Center. On April 20, 2010, the City received notification from the County that they have contracted for \$2.2 million in laboratory improvements. The County has invoiced the City for \$125,000 to partially fund the improvements, pursuant to the 2001 agreement.

Financial Consideration: A specific funding source is not included in the budget. Staff proposes contingency funds budgeted within the General Fund.

Goal Impact: The County Regional Forensic Center supports the Wichita Police Department and the goal of a Safe and Secure Community.

Legal Consideration: The City is obligated under the 2001 Memorandum of Agreement to transfer the funding for capital improvements at the County Regional Forensic Center.

Recommendation/Actions: It is recommended that the City Council approve the payment of \$125,000 to Sedgwick County and authorize the necessary budget adjustments.

Attachments: 2001 Memorandum of Agreement – Consolation of Laboratory Operation, Control and Funding, AIA Document A107 – 1997 and Sedgwick County, Kansas Invoice

This 9-25-01

4443-7

MEMORANDUM of AGREEMENT
Consolidation of Laboratory Operation, Control and Funding

THIS AGREEMENT is made and entered into this 10th day of October, 2001, by and between the Board of County Commissioners of Sedgwick County, Kansas, hereinafter referred to as "County" and the City of Wichita, Kansas, hereinafter referred to as "City."

WHEREAS, County currently operates and funds the Sedgwick County Regional Forensic Center (hereinafter "Center") and City operates and funds a Crime Laboratory within the Wichita Police Department (hereinafter "WPD"); and

WHEREAS, the Center and WPD representatives have met extensively and agreed that consolidating the operations of the Criminalistics Unit (Drug Identification and Serology) of the WPD's Crime Laboratory with the Forensic Science Laboratories of the Center will optimize the cost effective provision of services in the best interest of the parties and the citizens of the City of Wichita and Sedgwick County; and

WHEREAS, the County and the City agree that it is their mutual objective to fully consolidate the Criminalistics Unit of the WPD into the Center to function as a single operating unit with the Criminalistics Section of the Center; and

WHEREAS, the parties intend that, once the WPD Forensic Chemists positions become funded by the County, County will provide benefits and years of service as similar as possible to those received by the employee with the City on the last day said positions were funded by the City. The County intends to provide to the transferred employees, benefits as described in the Sedgwick County & Fire District Personnel Policies and Procedures Manual and a phase-out period for those City benefits which are inconsistent with County benefits; provided that, however, retirement benefits will be distributed in a manner consistent with the provisions of K.S.A. 2000 Supp. 74-4912b; and

WHEREAS, said merger is authorized pursuant to K.S.A. 12-2908.

NOW THEREFORE, SEDGWICK COUNTY AND THE CITY OF WICHITA MUTUALLY AGREE TO THE FOLLOWING:

SECTION I. MERGER.

Except as otherwise described herein, the operation, administration and control of the Chemistry/Serology Unit of the WPD Crime Laboratory is hereby merged, transferred and vested in and to the County, effective January 1, 2002.

SECTION II. FUNDING.

- A. On the effective date of this agreement or within thirty (30) days thereafter, the City shall transfer operational funds in the amount of \$78,750 to the County's operational budget for the Center, in consideration for assuming operations previously budgeted to be performed by the Chemistry/Serology Unit of the WPD Crime Laboratory.

- B. In consideration for assuming in subsequent years the duties currently handled by WPD's Chemistry/Serology Unit, the City agrees to transfer \$125,000 to the County's budget. These funds will be released available to the County within thirty (30) days upon County's notification to the City's Director of Finance of the execution by the County of an approved capital improvement project in an amount greater than or equal to \$125,000 for the expansion or renovation of evidence or laboratory facilities. Not more than twenty percent (20%) of said \$125,000 will be made available for design costs and the remaining amount will be made available for construction costs. Any capital improvement project which involves the expenditure of these funds shall be substantially completed within ten (10) years of the effective date of this agreement.

SECTION III. PERSONNEL.

- A. The WPD shall assign two qualified "WPD Forensic Chemists" to the Center for the year 2002. Said Forensic Chemists shall each have previously testified in court as an expert in the field of Forensic Chemistry. The Director of the Forensic Science Laboratory shall determine all technical protocols and will be responsible for all work assignments.
- B. During 2002, the City shall provide two employees who will serve as WPD Forensic Chemists and who shall be employees of the City of Wichita Police Department subject to the rules and regulations relating to employment with the City of Wichita except as set forth in paragraph A of this section. The WPD shall appoint a liaison with whom the Center will coordinate on all personnel issues including, but not limited to, personnel evaluations, documentation of sick leave, administrative leave and vacation time.
- C. If, during the year 2002, one or both WPD Forensic Chemists' employment with the City is terminated (through retirement or otherwise), the County shall provide an equivalent number of full time employees to the Center. The City shall be responsible for funding the two Forensic Chemists positions through the entire year of 2002, limited to a maximum of the original funding for these positions.
- D. Beginning January 1, 2003, said positions will become permanent, full-time County positions and employees filling said positions shall be subject to the rules and regulations relating to employment with the County. The County shall provide full funding for these positions beginning January 1, 2003.

SECTION IV. EQUIPMENT.

Upon effective date of this Agreement, the City shall transfer ownership of the laboratory equipment currently utilized in the Chemistry/Serology Unit of the WPD Laboratory to the County in "as is" condition; provided, however the County shall retain full discretion regarding which specific items will be transferred. The City warrants that any and all equipment available for transfer is unencumbered by claims or demands by third parties, except for equipment purchased from grant funds in which instance the County will assume any grant obligations. The County shall take ownership of and be responsible for any and all maintenance of the specific

equipment actually transferred. The City shall provide proper documentation to the County indicating transfer of ownership of the equipment actually transferred. Any equipment not transferred will remain the property of the City of Wichita.

SECTION V. EFFECTIVE DATE.

This Agreement shall become a legal and binding Agreement upon signature of same by both parties, but shall have an effective date of January 1, 2002.

SECTION VI. ENTIRE AGREEMENT.

This Agreement is intended to encompass the entire Agreement of the parties and supercedes all prior agreements with respect to the subject matter hereof. Any amendment or modification of this agreement must be in writing and be signed by the parties in order to be effective.

SECTION VII. ASSIGNMENT.

Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other.

SECTION VIII. INDEMNIFICATION.

To the extent allowed by law, each party agrees to indemnify and hold the other, including officers, agents and employees, harmless from all claims, suits, judgments and demands arising from the indemnifying party's negligent and/or intentional acts and omissions in the performance of duties prescribed in this Agreement. However, the amount of such indemnification shall not exceed \$ 500,000 for any number of claims arising out of a single occurrence or accident. Each party shall give the other immediate written notice of any claim, suit or demand that may be subject to this provision. This provision shall survive the termination of this Agreement.

SECTION IX. CASH BASIS AND BUDGET LAWS.

The parties hereto understand and agree that the right of County and/or the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas; and as such, it is further agreed that County and/or the City is obligated only to pay periodic payments or installments as may lawfully be paid from either funds budgeted and appropriated for that purpose during County's and/or City's current budget year; or, funds made available from any lawfully operated revenue-producing source.

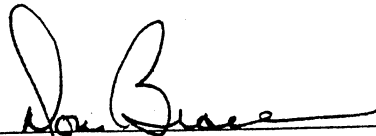
SECTION X. NON-DISCRIMINATION.

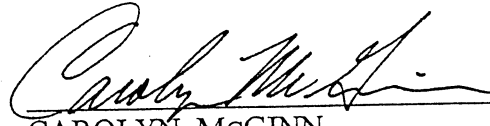
During the performance of this Agreement the parties agree that they will not discriminate against any employee or service recipient because of race, color, religion, sex, age, disability, ancestry or national origin, and will comply with all Federal and State of Kansas antidiscrimination laws.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

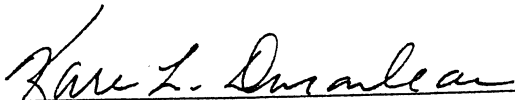
BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

ATTEST:


DON BRACE, County Clerk


CAROLYN MCGINN
Chair - Fourth District

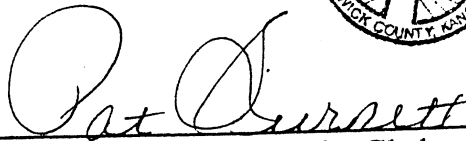
APPROVED AS TO FORM:


KAREN L. DURANLEAU
Assistant County Counselor

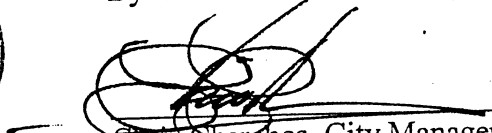
THE CITY OF WICHITA, KANSAS

By the Direction of the City Council

ATTEST:

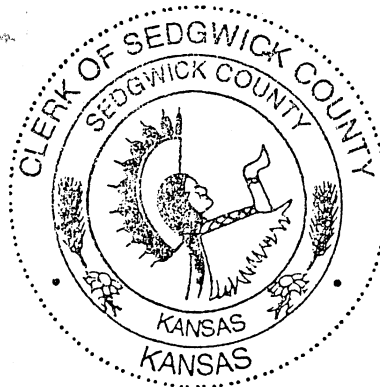

PAT BURNETT, City Clerk




Chris Cherches, City Manager

APPROVED AS TO FORM:


GARY E. REBENSTORF
City Attorney



AIA® Document A107™ – 1997

Abbreviated Standard Form of Agreement Between Owner and Contractor for Construction Projects of Limited Scope where the basis of payment is a STIPULATED SUM

AGREEMENT made as of the Twenty Ninth day of April in the year 2009
(In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)

Sedgwick County Board of County Commissioners
525 N. Main
Wichita, Kansas 67203

and the Contractor:
(Name, address and other information)

Conco, Inc.
3030 All Hallows
Wichita, Kansas 67217

the Project is:
(Name and location)

Expansion of the Sedgwick County Regional Forensic Science Center (RFSC)
1109 N. Minneapolis
Wichita, Kansas 672214

the Architect is:
(Name, address and other information)

WDM Architects P.A.
105 N. Washington
Wichita, Kansas 67202

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This Document includes abbreviated General Conditions and should not be used with other general conditions.

This document has been approved and endorsed by The Associated General Contractors of America.

ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

Insert the following after the words "Contract Documents" in the first line: "listed in Article 5 of this Agreement or reasonably inferable by the Contractor from the Contract Documents as necessary to produce the results intended by the Contract Documents"

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

Delete: "of this Agreement unless a different date is stated below or provision is made for the date to be"

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 The Contractor shall achieve Substantial Completion of the entire Work not later than Two Hundred Twenty (220) days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

, subject to adjustments of this Contract Time as provided in the Contract Documents

(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

Add the following: "the date fixed in a notice to proceed issued by the Owner".

Add the following new paragraphs:

2.3.1 All times stated in the Contract Documents, including, without limitation, those for the commencement, prosecution, interim milestones, and completion of the Work, and for the delivery and installation of materials and equipment, are of the essence in this Agreement.

2.3.2 The date of substantial completion of the Work or a designated portion thereof is the date, certified by the Architect, when construction is sufficiently complete in accordance with the Contract Documents that the Owner may occupy and use the Work or designated portion thereof for the purposes for which it was intended.

2.3.3 If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time and as otherwise required by the Contract Documents, the Owner shall be entitled to retain or recover from the Contractor, as liquidated damages and not as a penalty, the following daily amount commencing upon the first day following expiration of the Contract Time and continuing until the Date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Owner will incur as a result of delayed completion of the Work; **Liquidated Damages will be \$ 265.00 a day.**

2.3.4 The Owner may deduct liquidated damages as described in the above paragraph from any unpaid amounts then or thereafter due the Contractor under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due the Contractor shall be payable to the Owner at the demand of the Owner, together with interest from the date of the demand at a rate equal to the lower of the Treasury Bill rate or the highest lawful rate of interest payable by the Contractor.

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ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Two Million Forty Seven Thousand Dollars (\$ 2,047,000), subject to additions and deletions as provided in the Contract Documents.

Add the word "proper" prior to the word "performance" in the first sentence; and insert at the end of the first sentence "and the completion of the Work."

§ 3.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

Alternate No. 1 Lump Sum Price: Two Hundred and One Thousand (\$201,000) Dollars

Alternate No. 2 Lump Sum Price: Fourteen Thousand (\$14,000) Dollars

§ 3.3 Unit prices, if any, are as follows:

Description	Units	Price (\$ 0.00)
Excavation of existing footings, foundations, slabs, or other debris not visible at the surface. Removal from site of material excavated, fill for excavation, compaction of fill, and any required testing	Per cubic yard	\$100.00

ARTICLE 4 PAYMENTS

§ 4.1 PROGRESS PAYMENTS

§ 4.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

Delete the words "or as follows" from the last line and replace with "and shall be less the specified retainage."

§ 4.1.2 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment to the Contractor not later than the day of the same month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than () days after the Architect receives the Application for Payment.

Delete existing Paragraph 4.1.2 and replace with the following: "Provided that an Application for Payment is received by the Architect not later than the twenty-fifth (25th) day of a month, the Owner shall make payment to the Contractor not later than the third Friday of the next month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect received the Application for Payment."

Add the following new Paragraphs:

4.1.2.1 Notwithstanding anything to the contrary in this Contract, payment of amounts due a Contractor from an Owner, except retainage, shall be made within 30 days after the Owner receives a timely, properly completed, undisputed request for payment according to terms of the contract, unless extenuating circumstances exist which would preclude approval of payment within 30 days. If such extenuating circumstances exist, than payment shall be made within 45 days after the Owner receives such payment request.

4.1.2.2 If the Owner fails to pay Contractor within the time period set in Paragraph 4.1.2.1, the Owner shall pay interest computed at the rate of eighteen percent (18%) per annum on the undisputed amount to the Contractor beginning on the day following the end of the time period set forth in Paragraph 4.1.2.1.

§ 4.1.3 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

per annum

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

This paragraph is intentionally left blank.

§ 4.2 FINAL PAYMENT

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 17.2, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follow:

ARTICLE 5 ENUMERATION OF CONTRACT DOCUMENTS

§ 5.1 The Contract Documents are listed in Article 6 and, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 5.1.1 The Agreement is this executed 1997 edition of the Abbreviated Standard Form of Agreement Between Owner and Contractor, AIA Document A107-1997.

§ 5.1.2 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated , and are as follows:

Document	Title	Pages
----------	-------	-------

Delete the existing Paragraph 5.1.2 and replace with the following: "The Supplementary and other Conditions of the Contract are those modified and contained in the Project Manual dated March 12, 2009."

§ 5.1.3 The Specifications are those contained in the Project Manual dated as in Section 5.1.2, and are as follows: *(Either list the Specifications here or refer to an exhibit attached to this Agreement.)* Title of Specifications exhibit:

(Table deleted)

Include at the end of the paragraph: "Sections as listed in the Table of Contents."

§ 5.1.4 The Drawings are as follows, and are dated March 12, 2009 unless a different date is shown below: *(Either list the Drawings here or refer to an exhibit attached to this Agreement.)*

Title of Drawings exhibit:

(Table deleted)

Include at the end of the paragraph: "Drawing Sheets as listed on the Cover Sheet."

§ 5.1.5 The Addenda, if any, are as follows:

Number	Date	Pages
Addenda #1	April 1, 2009	49
Addenda #2	April 13, 2009	23

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 5.

§ 5.1.6 Other documents, if any, forming part of the Contract Documents are as follows:

(List any additional documents which are intended to form part of the Contract Documents.)

Request for Bids, Invitation for Bids, Instructions to Bidders, and Bid Form.

GENERAL CONDITIONS

ARTICLE 6 GENERAL PROVISIONS

§ 6.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement with Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

Insert the words "Article 5 of" after the words "listed in" on the third line of Paragraph 6.1.

Add the following at the end of Paragraph 6.1: "In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes, resolutions, and ordinances, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement, either or both in accordance with the Architect's interpretation. The terms and conditions of this Paragraph 6.1, however, shall not relieve the Contractor of any obligations set forth in Paragraphs 8.1 and 8.6."

§ 6.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or sub-subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor.

§ 6.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

Init.

§ 6.4 EXECUTION OF THE CONTRACT

Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

Add the following at the end of Paragraph 6.4: "Prior to execution of the Agreement, the Contractor and each Subcontractor evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Paragraph 15.2, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Paragraph 6.4."

§ 6.5

OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. The Contractor, Subcontractors, sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights.

ARTICLE 7 OWNER

§ 7.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 7.1.1 The Owner shall furnish and pay for surveys and a legal description of the site.

§ 7.1.2 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 7.1.3 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for other necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.

§ 7.2 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 7.3 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Owner, after 10 days' written notice to the Contractor and without prejudice to any other remedy the Owner may have, may make good such deficiencies and may deduct the reasonable cost thereof, including Owner's expenses and compensation for the Architect's services made necessary thereby, from the payment then or thereafter due the Contractor.

Add the following new Paragraph 7.4:

7.4 EXTENT OF OWNER'S RIGHTS

7.4.1 The rights stated in this Article 7 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) in law, or (iii) in equity.

7.4.2 In no event shall Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures of for the safety precautions and programs in connection with the Work, notwithstanding any of the rights and authorities granted the Owner in the Contract Documents."

ARTICLE 8 CONTRACTOR

§ 8.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 8.1.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 7.1.1, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions or inconsistencies in the Contract Documents; however, any errors, omissions or inconsistencies discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require.

8.1.1.1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect or the Owner.

8.1.1.2 The Contractor shall, therefore, satisfy itself to the accuracy of all grades, elevations, dimensions, and visible locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner."

§ 8.1.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 8.2 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 8.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall be fully and solely responsible for the jobsite safety thereof unless the Contractor gives timely written notice to the Owner and Architect that such means, methods, techniques, sequences or procedures may not be safe.

§ 8.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 8.3 LABOR AND MATERIALS

§ 8.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 8.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 8.3.3 The Contractor shall deliver, handle, store and install materials in accordance with manufacturers' instructions.

§ 8.3.4 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

§ 8.4 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear and normal usage.

Replace the word "may" with the word "shall" in the fifth line of Paragraph 8.4.

Insert the following at the end of Paragraph 8.4: "The Contractor agrees to assign to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such a manner so as to preserve any and all such manufacturer's warranties."

§ 8.5 TAXES

The Contractor shall pay sales, consumer, use and other similar taxes which are legally enacted when bids are received or negotiations concluded:

Add the following new Paragraphs:

- 8.5.1 Materials and equipment incorporated in this Project are exempt from the payment of sales tax under the laws of the State of Kansas.
- 8.5.2 The Owner will provide the Contractor with a proper exemption certificate number when the notice to proceed is issued. Should the Owner fail to provide an exemption certification the Contractor shall notify the Architect in writing prior to placing any orders. The Contractor shall be reimbursed for sales tax amounts for which he becomes liable until such exemption is provided.
- 8.5.3 Upon issuance of a proper exemption certificate number to the Contractor, the Contractor shall assume full responsibility for his own assessed penalties relating to the Contractor's improper use of the exemption certificate. Contractor shall comply with statutes of the State of Kansas related to sales tax exemption.
- 8.5.4 The Contractor shall be responsible for furnishing the Owner a copy of all invoices bearing the exemption certificate number pertaining to materials that are incorporated in this project.
- 8.5.5 Contractor shall retain, for a period of not less than five (5) years, all his and his subcontractor's invoices claiming sales tax exemption, properly identified with tax exemption numbers as required by the State of Kansas.
- 8.5.6 Upon completion of the Project, the Contractor shall execute and issue to the Owner a certificate of compliance on the form provided by the State Department of Revenue.

§ 8.6 PERMITS, FEES AND NOTICES

§ 8.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

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§ 8.6.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work. The Contractor shall promptly notify the Architect and Owner if the Drawings and Specifications are observed by the Contractor to be at variance therewith. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 8.7 SUBMITTALS

§ 8.7.1 The Contractor shall review for compliance with the Contract Documents, approve in writing and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness. The Work shall be in accordance with approved submittals.

§ 8.7.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 8.8 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

Add the following new subparagraphs:

8.8.1 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

8.8.2 The Contractor and any such entity for who the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

8.8.3 Without limitation of any other provision of the Contract Documents, Contractor shall use best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work, and (ii) the Building, in the event of partial occupancy. Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project Site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

8.8.3.1 Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with all resolution, rules, and regulations promulgated by the Owner in connection with the use and occupancy of the project site and the building, as amended from time to time. The Contractor shall immediately notify the Owner in writing if during the performance of the Work, the Contractor finds compliance with any portion of such resolutions, rules and regulation to be impracticable, setting forth the problems of such compliance and suggesting alternates through the same results intended by such portions of the resolutions, rules, and regulations can be achieved.

The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements of the resolutions, rules and regulations. In the event Owner requires compliance with subsequently adopted resolutions, rules and regulations, any resulting change in the Work shall be adjusted as provided in Article 12 of the Contract.

8.8.4 The Contractor shall comply with all insurance requirements and collective bargaining agreements applicable to use and occupancy of the Project site and the Building.

§ 8.9 CUTTING AND PATCHING

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

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§ 8.10 CLEANING UP

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus material.

§ 8.11 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees; shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect, unless the Contractor has reason to believe that there is an infringement of patent or copyright and fails to promptly furnish such information to the Architect.

§ 8.12 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 8.13 INDEMNIFICATION

§ 8.13.1 To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 16.3, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 8.13.

Delete all language in the first line of Subparagraph 8.13.1 beginning with the words "and to the extent" and continuing through "Paragraph 16.3" in the second line.

Insert the following after parenthetical "(other than the Work itself)," in the seventh line of Subparagraph 8.13.1 "(including loss of use resulting therefrom)"

§ 8.13.2 In claims against any person or entity indemnified under this Section 8.13 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 8.13.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

Add the following new paragraphs:

8.13.3 The Contractor's indemnity obligations under this Paragraph 8.13 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including without limitation, reasonable attorney's fees) and punitive damages (if any are assessed against the Owner for the Contractor's actions) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, resolution, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for who either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections, as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work by the Contractor, a Subcontractor, or any person or entity for whom is responsible.

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8.13.4 The Contractor shall indemnify and hold harmless all of the Indemnitees from and against any costs and expenses (including reasonable attorney's fees) incurred by any of the Indemnitees in enforcing any of the Contractor's defense, indemnity, and hold harmless obligations under this Contract.

ARTICLE 9 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

§ 9.1 The Architect will provide administration of the Contract and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 17.2.

§ 9.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 8.2.1.

§ 9.3 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 9.4 Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 9.5 The Architect will have authority to reject Work that does not conform to the Contract Documents.

§ 9.6 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 9.7 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions so rendered in good faith.

§ 9.8 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

Add the following after the word "effect" in the first line of Subparagraph 9.8: ", in connection with Administration of the Contract."

§ 9.9 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 9.10 CLAIMS AND DISPUTES

§ 9.10.1 Claims, disputes and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 15.2, shall be referred initially to the Architect for decision. Such matters, except those relating to aesthetic effect and except those waived as provided for in Section 9.11 and Sections 14.5.3 and 14.5.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

Add the following at the end of the first sentence in Subparagraph 9.10.1: "If the claimant recognizes the claim prior to the date of final payment."

Delete the following: "Such matters, except those relating to aesthetic and except those waived as provided for in Paragraph 9.11 and Subparagraphs 14.5.3 and 14.5.4 shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party."

Add the following: "The Contractor and Owner shall not be obligated to resolve any claim, dispute, or other matters related to the contract by mediation or arbitration. Any reference in the contract documents to mediation or arbitration is deemed void."

§ 9.10.2 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by the Architect, by mediation or by arbitration.

Delete this paragraph in its entirety.

§ 9.10.3 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

Delete this paragraph in its entirety.

§ 9.10.4 Claims, disputes and other matters in question arising out of or relating to the Contract that are not resolved by mediation, except matters relating to aesthetic effect and except those waived as provided for in Section 9.11 and Sections 14.5.3 and 14.5.4, shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association and shall be made within a reasonable time after the dispute has arisen. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Except by written consent of the person or entity sought to be joined, no arbitration arising out of or relating to the Contract Documents shall include, by consolidation, joinder or in any other manner, any person or entity not a party to the Agreement under which such arbitration arises, unless it is shown at the time the demand for arbitration is filed that (1) such person or entity is substantially involved in a common question of fact or law, (2) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, (3) the interest or responsibility of such person or entity in the matter is not insubstantial, and (4) such person or entity is not the Architect or any of the Architect's employees or consultants. The agreement herein among the parties to the Agreement and any other written agreement to arbitrate referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

Delete this paragraph in its entirety.

§ 9.11 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- .1** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2** damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

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This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 19. Nothing contained in this Section 9.11 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

Delete this paragraph in its entirety.

ARTICLE 10 SUBCONTRACTORS

§ 10.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 10.2 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of the Subcontractors for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor to whom the Owner or Architect has made reasonable and timely objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 10.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress afforded to the Contractor by these Contract Documents.

ARTICLE 11 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 11.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of the contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided in Section 9.10.

§ 11.2 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 11.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

11.4 The Contractor shall, as part of the Work, provide for the coordination of work to be performed by each separate contractor engaged by the Owner, of any, with the work to be performed by the Contractor or its Subcontractors of any tier. The Contractor shall use its best efforts to cooperate with the Owner and all separate contractors, their subcontractors, and any other entity involved in the performance of the Work. In order to cause the Work and any work to be performed by separate contractors to be completed in an expeditious manner, the Contractor agrees that it will ensure that such separate contractors have a reasonable opportunity to complete their work as and when required.

11.5 If any part of the Work depends on the proper performance of the work of a separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Owner any apparent discrepancies or defects in such other work that render it unsuitable and prevent the Contractor from proceeding expeditiously with the Work.

11.6 If the Contractor wrongfully causes damage to the Work or the property of the Owner, the Contractor shall promptly remedy such damage. If the Contractor wrongfully causes damage to the work of property of any

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separate contractor, the Contractor shall promptly attempt to settle any resulting dispute or claim with such other contractor.

ARTICLE 12 CHANGES IN THE WORK

§ 12.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor and Architect, or by written Construction Change Directive signed by the Owner and Architect.

§ 12.2 The cost or credit to the Owner from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit.

§ 12.3 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

§ 12.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted.

Add the following at the end of Paragraph 12.4: "No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or that reasonably should have been disclosed by the Contractor's (i) prior inspections, tests, reviews, and preconstruction services for the Project, or (ii) inspections, tests, reviews, and preconstruction services that the Contractor had the opportunity to make or should have performed in connection with the Project."

Add the following new Paragraphs:

12.5 Except as permitted in Paragraph 12.1, a change in the Contract Sum or the Contract Time shall be accomplished only by a Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

12.6 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

ARTICLE 13 TIME

§ 13.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 13.2 The date of Substantial Completion is the date certified by the Architect in accordance with Section 14.4.2.

§ 13.3 If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine, subject to the provisions of Section 9.10.

ARTICLE 14 PAYMENTS AND COMPLETION

§ 14.1 APPLICATIONS FOR PAYMENT

§ 14.1.1 Payments shall be made as provided in Article 4 of this Agreement. Applications for Payment shall be in a form satisfactory to the Architect.

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§ 14.1.2 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

Add the following new paragraph:

14.1.3 Until Substantial Completion, the Owner shall pay ninety percent of the amount due the Contractor on account of progress payments with the remaining ten percent held as retainage which is not subject to interest payments.

§ 14.2 CERTIFICATES FOR PAYMENT

§ 14.2.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 14.2.3.

§ 14.2.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 14.2.3 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 14.2.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 14.2.1. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 8.2.2, because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.

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§ 14.2.4 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 14.3 PAYMENTS TO THE CONTRACTOR

§ 14.3.1 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in similar manner.

§ 14.3.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 14.3.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 14.4 SUBSTANTIAL COMPLETION

§ 14.4.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 14.4.2 When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion, establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. Upon the issuance of the Certificate of Substantial Completion, the Architect will submit it to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

§ 14.5 FINAL COMPLETION AND FINAL PAYMENT

§ 14.5.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 14.5.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

Add the following at the end of Subparagraph 14.5.1: "All warranties, guarantees, operational and parts manuals required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate of Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner."

§ 14.5.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ 14.5.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from:

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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§ 14.5.4 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 15 PROTECTION OF PERSONS AND PROPERTY

§ 15.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein; and
- .3 other property at the site or adjacent thereto.

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 15.1.2 and 15.1.3, except for damage or loss attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 8.13.

Add the following at the end of Paragraph 15.1: "When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from injury by any cause. The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that causes death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injury, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect."

§ 15.2 HAZARDOUS MATERIALS

§ 15.2.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article 12 of this Agreement.

§ 15.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 15.2.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

Delete Subparagraph 15.2.2 in its entirety.

§ 15.2.3 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

Delete Subparagraph 15.2.3 in its entirety.

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ARTICLE 16 INSURANCE

§ 16.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located insurance for protection from claims under workers' compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations. Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner.

§ 16.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

Delete Paragraph 16.2 in its entirety.

§ 16.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

Delete Paragraph 16.3 in its entirety.

§ 16.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability insurance under Section 16.1.

§ 16.3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

§ 16.3.3 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability insurance under Section 16.1.

§ 16.4 PROPERTY INSURANCE

§ 16.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance on an "all-risk" policy form, including builder's risk, in the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied and installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 14.5 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 16.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and sub-subcontractors in the Project.

Delete the word "Owner" in the first line and replace with the word "Contractor."

Delete the phrase "Property insurance on an "all risk" policy form, including builder's risk," in the second and third lines and replace with the following: "builder's risk insurance, with a deductible not to exceed \$1,000,"

Delete the word "property" in the fifth line and replace with the words "builder's risk."

§ 16.4.2 The Owner shall file a copy of each policy with the Contractor before an exposure to loss may occur. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

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Delete the first sentence and replace with the following: "The Contractor shall file a copy of each policy with the Owner before an exposure to loss may occur."

Delete the word "Contractor" in the last line and replace with the word "Owner."

§ 16.5 WAIVERS OF SUBROGATION

Delete Paragraph 16.5 in its entirety.

§ 16.5.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 11, if any, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section 16.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 11, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 16.5.2 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their sub-subcontractors in similar manner.

ARTICLE 17 CORRECTION OF WORK

§ 17.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

Add the following at the end of Subparagraph 17.1: "If prior to the date of Substantial Completion, the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner."

Definition of SUBSTANTIAL COMPLETION: A project is substantially complete when the Owner can legally take occupancy and use the facility for its intended purpose.

§ 17.2 In addition to the Contractor's obligations under Section 8.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 14.4.2, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

Delete all language starting with the words "and to" and continuing through the word "warranty" in the last line of Paragraph 17.2.

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Add the following last sentence: The Owner shall, prior to making any warranty claim, provide the Contractor with an opportunity to promptly make the correction.

§ 17.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.3.

§ 17.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ 17.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 17.

Delete existing Paragraph 17.5 in its entirety and replace with the following: "Upon completion of any Work under or pursuant to this Article 17, the one (1) year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Article 17 shall cover any repairs and replacement to any part of the Work or other property caused by the defective Work."

ARTICLE 18 MISCELLANEOUS PROVISIONS

(Paragraph deleted)

§ 18.1 ASSIGNMENT OF CONTRACT

Neither party to the Contract shall assign the Contract without written consent of the other.

§ 18.2 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 18.3 TESTS AND INSPECTIONS

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

§ 18.4 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

As between Owner and Contractor, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued:

- .1 not later than the date of Substantial Completion for acts or failures to act occurring prior to the relevant date of Substantial Completion;
- .2 not later than the date of issuance of the final Certificate for Payment for acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to the issuance of the final Certificate for Payment; and
- .3 not later than the date of the relevant act or failure to act by the Contractor for acts or failures to act occurring after the date of the final Certificate for Payment.

Delete Paragraph 18.4 in its entirety.

ARTICLE 19 TERMINATION OF THE CONTRACT

§ 19.1 TERMINATION BY THE CONTRACTOR

If the Architect fails to recommend payment for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment thereon for a period of 30 days, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed and

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User Notes:

for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages applicable to the Project.

§ 19.2 TERMINATION BY THE OWNER

§ 19.2.1 The Owner may terminate the Contract if the Contractor:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 19.2.2 When any of the above reasons exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' written notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 19.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 19.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 19.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

Add the following new Paragraph:

19.3 TERMINATION BY THE OWNER FOR CONVENIENCE

19.3.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

19.3.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

19.3.2.1 Cease operations as directed by the Owner in the notice;

19.3.2.2 Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work;

19.3.2.3 Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

19.3.3 Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered, and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitations, anticipated profits. Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the work, (ii) claims that the Owner has against the Contractor under the Contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

ARTICLE 20 OTHER CONDITIONS OR PROVISIONS

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Add the following new paragraphs:

- 20.1 Contractor shall observe the provisions of the Kansas Acts Against Discrimination and shall not discriminate against any person in the performance of work under the present agreement because of race, religion, color, sex, disability, national origin or ancestry.
- 20.2 In all solicitations or advertisements for employees, Contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.
- 20.3 If Contractor fails to comply with the manner in which Contractor reports to the Kansas Human Rights Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Contractor shall be deemed to have breached the present contract and it may be canceled, terminated, or suspended in whole or in parts by the Owner.
- 20.4 If Contractor is found guilty of a violation of the Kansas Acts Against Discrimination under a decision or order of the Kansas Human Rights Commission which has become final, Contractor shall be deemed to have breached the present agreement and it may be canceled, terminated, or shall be deemed to have breached the present agreement and it may be canceled, terminated or suspended, in whole or in part, by the Owner.
- 20.5 Contractor shall include the provisions of the above Paragraphs 20.1 through 20.4 inclusively, in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

This Agreement entered into as of the day and year first written above.

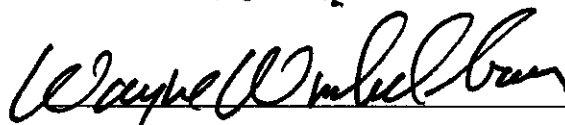
(Row deleted)

OWNER (Signature)



Kelly Parks
4th District
Board of Sedgwick County Commissioners

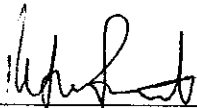
CONTRACTOR (Signature)



Wayne Winkelbauer
Chief Operating Officer

(Row deleted)

Approved as to Form



Robert W. Parnacott
Assistant County Counselor

Attest



Kelly B. Arnold
County Clerk



Init.

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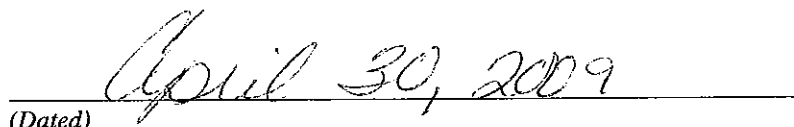
I, Paula L. Downs, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:17:20 on 04/30/2009 under Order No. 1000379702_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A107™ – 1997 - Abbreviated Standard Form of Agreement Between Owner and Contractor for Construction Projects of Limited Scope where the basis of payment is a STIPULATED SUM, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)



(Title)



(Dated)



SEDGWICK COUNTY, KANSAS

DIVISION OF FINANCE

Purchasing Department

* 525 N. Main Suite 823 *Wichita, KS 67203* Telephone (316) 660-7255 Fax (316) 383-7055 *

NOTICE TO PROCEED

Conco Inc.
3030 All Hallows
Wichita, KS 67217

PROJECT: Expansion of the Forensic Science Center, 1109 N. Minneapolis, Wichita, Ks

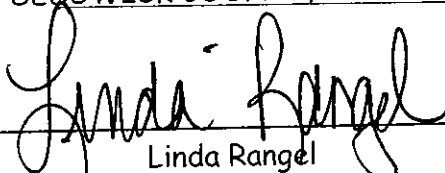
ISSUED: May 15, 2009

CONTRACTOR: Conco, Inc.

COMPLETION: Two Hundred Twenty (220) Calendar Days

This serves as your notice to proceed on the above referenced project. This notice shall authorize the contractor to begin on the above referenced project and shall serve notice that the work is to begin effective May 20, 2009.

SEDGWICK COUNTY, KANSAS



Linda Rangel
Administrative Specialist

192709 Sedg Co Forensic Science

Section	Scope of Work	Company	Name	Phone	Fax
00001		Conco, Inc.	Jon Clark	(316)943-7111	(316)943-4708
00001			Buresh	(316)943-7111	(316)943-4708
00001			Goevert, Chris	(316)943-7111	(316)943-4708
00002		Sedgwick County Purchasing	James Unruh	(316)660-7240	
00002		Wilson Darnell Mann P.A.	Stan Landwehr	(316)262-4700	(316)265-5811
00005		IMA of Kansas, Inc. (Wichita)	Jana Forrest	(316)266-6333	(316)266-6359
02282	termite treatment	Cintrex	Joseph Wright	(316)652-0683	(316)618-7378
02545	asphalt paving	Cornejo & Sons, Inc.	Bob Nash	(316)522-5100	(316)522-8187
02600	sanitary sewer	McCullough Excavation Inc	Mike Rayl	(316)634-2199	(316)634-6071
03300	concrete mix	Concrete Materials Company	Tim Kane	(316)522-8454	(316)522-8187
03355	precast	IPC Precast	Dirk McClure	(913)663-0201	(913)663-0202
04110	brick	Lusco Brick & Stone Co.	Ron Darmon	(316)262-0406	(316)262-0279
04215	block	Kansas Building Products	Terri Crawford	(316)943-3241	(316)943-8194
05105	structural steel	Metal Arts, Inc.	Don Grams	(316)942-7958	(316)942-7950
06501	millwork	Salina Planing Mill, Inc.	Steve Dunning	(800)825-0588	(785)825-0679
07510	roofing	Martin Roofing Co., Inc.	Kurt Baumgartner	(316)524-3293	(316)524-9294
08111	doors and hardware	American Direct Procurement	Teresa Deering	(316)264-4433	(316)616-0177
08360	overhead doors	Overhead Door Company	Chad Blackman	(316)265-4634	(316)267-7807
08810	glass and glazing	Lewis Street Glass Co., Inc.	Starr Bevan	(316)263-8259	(316)263-5702
15300	sprinkler	Central Fire Protection Co.	Spencer Tomlinson	(316)945-0797	(316)945-3174
15400	plumbing	Brand Plumbing, Inc.	Mike Brand	(316)942-2306	(316)942-3119
15500	HVAC	P&E Commercial Services LLC	Ken Ridder	(316)831-9883	(316)831-0263
16001	electrical	Greenway Electric	Steve John	(316)263-6189	(316)263-4075

ACORD™ CERTIFICATE OF LIABILITY INSURANCEDATE (MM/DD/YYYY)
5/6/09

PRODUCER

Willis of Greater Kansas, Inc.
P.O. Box 206
Wichita, KS 67201
316 263-3211

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

Conco Inc.
P.O. Box 9166
Wichita, KS 67277-0166

RECEIVED
MAY 07 2009
CONCO

INSURERS AFFORDING COVERAGE

NAIC

INSURER A: Union Insurance

25844

INSURER B: Continental Western Insurance

10804

INSURER C: Midwest Builder's Mutual Casualty Co

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR AI #CLCG 0020 03/07 GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	CWP2623315	05/01/09	05/01/10	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	CWP2623315	05/01/09	05/01/10	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
B		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$0	CU2626850	05/01/09	05/01/10	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$ \$ \$
C		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	09BWC0614	01/01/09	12/31/09	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

RE: Expansion of the Sedgwick County Regional Forensic Science Center (RFSD); 1109 N. Minneapolis, Wichita, KS 67214

The following are Additional Insureds as respects General Liability only
(See Attached Descriptions)

CERTIFICATE HOLDER

Sedgwick County Board of
County Commissioners
525 N. Main
Wichita, KS 67203

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30* DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Robert H. Hower

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

DESCRIPTIONS (Continued from Page 1)

if required by written contract and coverage applies only as respects ongoing operations performed by the Insured for the Additional Insureds. All coverage terms, conditions and exclusions of the policy apply.

The following are Additional Insureds on the Automobile Liability only to the extent they meet the definition of an Insured in the policy, which provides in pertinent part that an Insured includes anyone liable for the conduct of an insured but only to the extent of that liability. All coverage terms, conditions and exclusions of the policy apply. Consult the policy to determine the extent of coverage, if any.

Additional Insureds: Sedgwick County Board of County Commissioners and WDM Architects P.A.

The General Liability and Automobile Liability policies include a Waiver of Subrogation in favor of the Additional Insureds only if required by written contract.

The Additional Insured endorsement which is referenced above under "Type of Insurance-General Liability" is attached.

This Certificate of Insurance represents coverage currently in effect and may or may not be in compliance with any written contract.

* The following cancellation conditions always apply:

- 10 days for non-payment of premium
- If policy shown, 10 days for Workers' Compensation for fraud; material misrepresentation; non-payment of premium; other reasons approved by the Commissioner of Insurance

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTORS' COMMERCIAL GENERAL LIABILITY ENHANCEMENT ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. MEDICAL PAYMENTS

If **SECTION I – COVERAGE C MEDICAL PAYMENTS** is not otherwise excluded from this Coverage Part:

1. The Medical Expense Limit provided by this policy, subject to the terms of **SECTION III – LIMITS OF INSURANCE**, shall be the greater of:
 - a. \$10,000; or
 - b. The Medical Expense Limit shown in the Declarations of this Coverage Part.

B. FIRE, LIGHTNING, EXPLOSION, SMOKE AND SPRINKLER LEAKAGE DAMAGE TO PREMISES YOU RENT

If damage to premises rented to you under Coverage A. is not otherwise excluded from this policy, the following applies:

1. The last paragraph of **SECTION I – COVERAGE A.2. Exclusions** is deleted and replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion or sprinkler leakage to premises while rented to your or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **SECTION III – LIMITS OF INSURANCE**.

2. Paragraph 6. of **SECTION III – LIMITS OF INSURANCE** is deleted and replaced by the following:

6. Subject to 5. above, the greater of:

- a. \$300,000; or
- b. the Damage To Premises Rented To You Limit shown in the Declarations;

Is the most we will pay under **COVERAGE A** for damages because of "property damage" to any one premises, while rented to you, or temporarily occupied by you with the permission of the owner arising out of any one fire, lightning, explosion or sprinkler leakage incident.

3. Paragraph 4.b.(1)(b) **Other Insurance of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted and replaced by the following:

- (b) That is Fire, Lightning, Explosion or Sprinkler Leakage Insurance for premises rented to you or temporarily occupied by you with the permission of the owner;

4. Paragraph 9.a. of **SECTION V – DEFINITIONS** is deleted and replaced by the following:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion or sprinkler leakage to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

C. NON-OWNED WATERCRAFT

1. Paragraph g.(2) of **SECTION I – COVERAGE A.2. Exclusions** is deleted and replaced by the following:

A watercraft you do not own that is:

- (a) Less than 51 feet long; and
- (b) Not used to carry persons or property for a charge.

D. SUPPLEMENTARY PAYMENTS

SECTION I – SUPPLEMENTARY PAYMENTS – COVERAGES A AND B is amended as follows:

1. The limit of insurance in paragraph 1.b. is increased from \$250 to \$2,500; and
2. The limit of insurance in paragraph 1.d. is increased from \$250 to \$500.

E. AUTOMATIC ADDITIONAL INSURED – SPECIFIED RELATIONSHIPS

The following is added to Paragraph 2. of **SECTION II – WHO IS AN INSURED**:

- e. Any person or organization described in paragraph f. below, whom you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy.

Such person or organization is an insured provided:

- (1) The written or oral contract or agreement is:
 - (a) Currently in effect or becomes effective during the policy period; and
 - (b) Executed prior to an "occurrence" or offense to which this insurance would apply.
- (2) They are not specifically designated as an additional insured under any other provision of, or endorsement added to, this policy.

f. Only the following persons or organizations are additional insureds under this endorsement, and coverage provided to such additional insureds is limited as provided herein:

- (1) The manager or lessor of a premise leased to you, but only with respect to liability arising from the ownership, maintenance or use of that part of the premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- (a) Any "occurrence" which takes place after you cease to be a tenant of that premises.
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor.

- (2) Any person or organization from whom you lease equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

However, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

- (3) Any state or political subdivision, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent, or control and to which this insurance applies:

- (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
- (b) The construction, erection, or removal of elevators; or

(c) The ownership, maintenance, or use of any elevators.

F. ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS

1. **SECTION II – WHO IS AN INSURED** is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

A person's or organization's status as an additional insured under this policy ends when your operations for that additional insured are completed.

2. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (2) Supervisory, inspection, architectural or engineering activities.

- b. "Bodily injury" or "property damage" occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

3. The insurance provided by this endorsement is primary insurance and we will not seek contribution under any insurance policy under which such additional insured is a named insured, if such policy was procured and paid for by such additional insured, or a parent or related entity of such additional insured.

4. With respect to the insurance afforded to these additional insureds, **SECTION III - LIMITS OF INSURANCE** is amended as follows:

The limits applicable to the additional insured are those specified in the written contract or agreement or the limits stated in the Declarations, whichever is less. If no limits are specified in the written contract or agreement, the limits applicable to the additional insured are those specified in the Declarations. The limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

G. PROPERTY DAMAGE TO BORROWED EQUIPMENT

1. Paragraph 2.j. of **SECTION I - COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is amended as follows:

Paragraphs (3) and (4) of this exclusion do not apply to tools or equipment loaned to you, provided they are not being used to perform operations at the time of loss.

2. **SECTION III - LIMITS OF INSURANCE** is deleted and replaced by the following:

The most we will pay in any one "occurrence" for "property damage" to borrowed equipment is \$15,000. This limit of insurance is the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

3. Deductible

- a. Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of \$250 as applicable to "property damage" as the result of any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence".
- b. The terms of this insurance, including those with respect to our right and duty to defend the insured against any "suits" seeking those damages; and your duties in the event of an "occurrence", claim, or "suit" apply irrespective of the application of the deductible amount.

- c. We may pay any part or all of the deductible amount to effect settlement of any claim or suit and, upon notification of the action taken; you shall promptly reimburse us for such part of the deductible amount as we have paid.

H. BROADENED NAMED INSURED

Paragraph 3. of **SECTION II - WHO IS AN INSURED** is deleted and replaced by the following:

Any organization, other than a joint venture, over which you maintain ownership or majority interest of more than 50% will be a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.
- b. **COVERAGE A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization.
- c. **COVERAGE B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

I. CONSTRUCTION PROJECT GENERAL AGGREGATE LIMIT

1. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **COVERAGE A (SECTION I)**, and for all medical expenses caused by accidents under **COVERAGE C (SECTION I)**, which can be attributed only to ongoing operations at a single construction project away from premises owned by or rented to the insured:

- a. A Single Construction Project General Aggregate Limit applies to each construction project away from premises owned by or rented to the insured, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.

- b. The Single Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under **COVERAGE A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under **COVERAGE C** regardless of the number of:

- (1) Insureds;
- (2) Claims made or "suits" brought; or
- (3) Persons or organizations making claims or bringing "suits".

- c. Any payments made under **COVERAGE A** for damages or under **COVERAGE C** for medical expenses shall reduce the Single Construction Project General Aggregate Limit for that construction project away from premises owned by or rented to the insured. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Single Construction Project General Aggregate Limit for any other separate construction project away from premises owned by or rented to the insured.
 - d. The limits shown in the Declarations for Each Occurrence, Fire Damage and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Single Construction Project General Aggregate Limit.
2. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **COVERAGE A (SECTION I)**, and for all medical expenses caused by accidents under **COVERAGE C (SECTION I)**, which cannot be attributed only to ongoing operations at a single designated construction project away from premises owned by or rented to the insured:
- a. Any payments made under **COVERAGE A** for damages or under **COVERAGE C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
 - b. Such payments shall not reduce any Single Construction Project General Aggregate Limit.
3. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Single Construction Project General Aggregate Limit.
4. If the applicable construction project away from premises owned by or rented to the insured has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
5. The provisions of **Limits Of Insurance (SECTION III)** not otherwise modified by this endorsement shall continue to apply as stipulated.

J. KNOWLEDGE OF OCCURRENCE

The following is added to paragraph 2. **Duties In The Event Of Occurrence, Offense, Claim Or Suit of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

- e. A report of an "occurrence", offense, claim or "suit" to:
 - (1) You, if you are an individual,
 - (2) A partner, if you are a partnership,
 - (3) An executive officer, if you are a corporation, or
 - (4) A manager, if you are a limited liability company;

is considered knowledge and requires you to notify us of the "occurrence", offense, claim, or "suit" as soon as practicable.

- f. We are considered on notice of an "occurrence", offense, claim or "suit" that is reported to your Workers' Compensation insurer for an event which later develops into an "occurrence", offense, claim or "suit" for which there is coverage under this policy. However, we will only be considered on notice if you notify us as soon as you know the claim should be addressed by this policy rather than your Workers' Compensation policy.

K. UNINTENTIONAL OMISSIONS

The following is added to paragraph 6. **Representations of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

- d. If you unintentionally fail to disclose any exposures existing at the inception date of your policy, we will not deny coverage under this Coverage Part solely because of such failure to disclose. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

This provision does not apply to any known injury or damage which is excluded under any other provision of this policy.

L. MENTAL ANGUISH

Paragraph 3. of **SECTION V - DEFINITIONS** is deleted and replaced by the following:

- 3. "Bodily Injury" means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from any of these at any time.

M. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS

Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended by the addition of the following:

We waive any right of recovery we may have because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract requiring such waiver with that person or organization and included in the "products-completed operations hazard".

However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

N. LIMITED JOB SITE POLLUTION

1. Exclusion f. under **Section I – Coverage A** is replaced by the following:

2. Exclusions

This insurance does not apply to:

f. Pollution

(1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) At or from a storage tank or other container, ducts or piping which is below or partially below the surface of the ground or water or which, at any time, has been buried under the surface of the ground or water and then subsequently exposed by erosion, excavation or any other means if the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" arises at or from any premises, site or location which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to

the premises, site or location in connection with such operations by such insured, contractor or subcontractor.

Subparagraph (b) does not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

(2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement issued or made pursuant to any environmental protection or environmental liability statutes or regulations that any insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for those sums the insured becomes legally obligated to pay as damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

2. With respect to "bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

a. The "Each Occurrence Limit" shown in the Declarations does not apply.

b. Paragraph 7. of **Limits Of Insurance (Section III)** does not apply.

c. Paragraph 1. of **Section III – Limits Of Insurance** is replaced by the following:

The Limits Of Insurance shown in this endorsement, or in the Declarations and the rules below fix the most we will pay regardless of the number of:

(1) Insureds;

- (2) Claims made or "suits" brought; or
- (3) Persons or organizations making claims or bringing "suits".
- d. The following are added to Section III -- Limits Of Insurance:

8. Subject to 2. or 3. above, whichever applies, the most we will pay for the sum of:

- a. Damages under Coverage A; and
- b. Medical expenses under Coverage C

because of "bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" is \$100,000.

- 9. Subject to 8. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants".

O. OTHER INSURANCE

If this policy includes a Coverage Form or an Endorsement which provides coverage for loss or damage covered by one or more of the Extensions of this endorsement, the limit and the coverage provided by this endorsement are deleted and replaced by the limit and coverage provided by that Coverage Form or Endorsement.

THE AMERICAN INSTITUTE OF ARCHITECTS



Bond No. 58661177

AIA Document A312

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Conco, Inc.
3030 All Hallows
Wichita, KS 67217

SURETY (Name and Principal Place of Business):

Western Surety Company
P. O. Box 5077
Sioux Falls, SD 57117-5077

OWNER (Name and Address):

Sedgwick County Board of County Commissioners
525 N. Main
Wichita, KS 67203

CONSTRUCTION CONTRACT

Date: April 29, 2009

Amount: (\$2,047,000.00) Two Million Forty Seven Thousand Dollars and 00/100

Description (Name and Location): Expansion of the Sedgwick County Regional Forensic Science Center (RFSC), 1109 N. Minneapolis, Wichita, KS 67214

BOND

Date (Not earlier than Construction Contract Date): May 7, 2009

Amount: (\$2,047,000.00) Two Million Forty Seven Thousand Dollars and 00/100

Modifications to this Bond:

☒ None

☐ See Page 3

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Conco, Inc.

Signature: A handwritten signature in black ink, appearing to read "Wayne Winkelbauer".

Name and Title: Wayne Winkelbauer
Chief Operating Officer

(Any additional signatures appear on page 3)

SURETY

Company: (Corporate Seal)

Western Surety Company

Signature: A handwritten signature in black ink, appearing to read "Kathleen A. Snyder".

Name and Title: Kathleen A. Snyder
Attorney-in-Fact

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

IMA of Kansas, Inc.
PO Box 2992
Wichita, KS 67201
316.267.9221

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

WDM Architects P.A.
105 N. Washington
Wichita, KS 67202

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for

which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation avail-

able to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

12 DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Con-

tractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company:

(Corporate Seal)

SURETY
Company:

(Corporate Seal)

Signature: _____
Name and Title:
Address:

Signature: _____
Name and Title:
Address:

THE AMERICAN INSTITUTE OF ARCHITECTS



Bond No. 58661177

AIA Document A312

Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Conco, Inc.
3030 All Hallows
Wichita, KS 67217

SURETY (Name and Principal Place of Business):

Western Surety Company
P. O. Box 5077
Sioux Falls, SD 57117-5077

OWNER (Name and Address):

Sedgwick County Board of County Commissioners
525 N. Main
Wichita, KS 67203

CONSTRUCTION CONTRACT

Date: April 29, 2009

Amount: (\$2,047,000.00) Two Million Forty Seven Thousand Dollars and 00/100

Description (Name and Location): Expansion of the Sedgwick County Regional Forensic Science Center (RFSC), 1109 N. Minneapolis, Wichita, KS 67214

BOND

Date (Not earlier than Construction Contract Date): May 7, 2009

Amount: (\$2,047,000.00) Two Million Forty Seven Thousand Dollars and 00/100

Modifications to this Bond:

☐ None

☒ See Page 6

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Conco, Inc.

Signature: Handwritten signature of Wayne Winkelbauer.

Name and Title: Wayne Winkelbauer
Chief Operating Officer

(Any additional signatures appear on page 6)

SURETY

Company: (Corporate Seal)

Western Surety Company

Signature: Handwritten signature of Kathleen A. Snyder.

Name and Title: Kathleen A. Snyder
Attorney-in-Fact

(FOR INFORMATION ONLY—Name, Address and Telephone)

AGENT or BROKER:

IMA of Kansas, Inc.
PO Box 2992
Wichita, KS 67201
316.267.9221

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

WDM Architects P.A.
105 N. Washington
Wichita, KS 67202

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2 With respect to the Owner, this obligation shall be null and void if the Contractor:

2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

2.2 Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

4 The Surety shall have no obligation to Claimants under this Bond until:

4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

4.2 Claimants who do not have a direct contract with the Contractor:

- .1** Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
- .2** Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
- .3** Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

6.2 Pay or arrange for payment of any undisputed amounts.

7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this

Bond shall be construed as a statutory bond and not as a common law bond.

14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15 DEFINITIONS

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the

Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

"Paragraph 6 of this Bond is deleted in its entirety and replaced with the following provision:
"Within a reasonable time (1) after the Claimant has satisfied the conditions of Paragraph 4 and (2) after the Surety has reviewed all supporting documentation it requested to substantiate the amount of the claim, the Surety shall pay or arrange for payment of any undisputed amounts. Failure of the Surety to satisfy the above requirements shall not be deemed a forfeiture or waiver of the Surety's or the Contractor's defenses under this Bond or their right to dispute such claim. However, in such event the Claimant may bring suit against the Surety as provided under this Bond."

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company:

(Corporate Seal)

SURETY
Company:

(Corporate Seal)

Signature: _____
Name and Title: _____
Address: _____

Signature: _____
Name and Title: _____
Address: _____

FILED
APP DOCKET NO. _____

2009 MAY -8 A 10: 51

CLERK OF DIST COURT
16TH JUDICIAL DISTRICT
SEDGWICK COUNTY, KS

09SB 170

Bond No. 58661177

BOND TO THE STATE OF KANSAS

Statutory Payment Bond

(K.S.A. 60-1111, as amended)

BY KNOW ALL MEN BY THESE PRESENTS, that we Conco, Inc., 3030 All Hallows, Wichita, KS
67217

as Principal, and Western Surety Company, P.O. Box 5077, Sioux Falls, SD 57117-5077

as Surety, are jointly and severally bound unto the STATE OF KANSAS in the sum of Two Million Forty
Seven Thousand and No/100----- Dollars (\$2,047,000.00)

for the use and benefit of persons entitled thereto for which payment well and truly be made, we hereby bind ourselves, our successors, heirs and executors and administrators, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT

Whereas, the said Conco, Inc.

has entered into a written contract with Sedgwick County Board of County Commissioners,
525 N. Main, Wichita, KS 67203

for certain work in connection with the Expansion of the Sedgwick County Regional Forensic
Science center (RFSC), 1109 N. Minneapolis, Wichita, KS 67214

under the date of April 29, 2009

NOW, THEREFORE, if the said Principal or the subcontractor or subcontractors of said Principal shall pay all indebtedness incurred for labor furnished materials, equipment, or supplies used or consumed in connection with or in or about the construction of or in making such public improvement, this obligation shall be void, otherwise, it shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed and delivered this

7th day of May 20 09.

Conco, Inc.

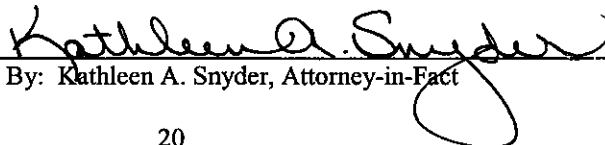
Principal



By: Wayne Winkelbauer, Chief Operating Officer

Western Surety Company

Surety



By: Kathleen A. Snyder, Attorney-in-Fact

Approved and filed this _____ day of _____ 20 _____

Clerk of the District Court

COPY

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Tim H Heffel, Kathleen A Snyder, Bret S Burton, Jana M Forrest, Emily R Terhune, Desiree E Westmoreland, Individually

of Wichita, KS, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 6th day of April, 2009.



WESTERN SURETY COMPANY

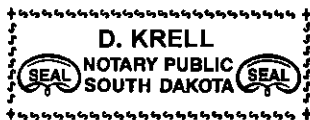
Paul T. Bruflat, Senior Vice President

State of South Dakota }
County of Minnehaha } ss

On this 6th day of April, 2009, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Senior Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

November 30, 2012



D. Krell, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 7th day of May, 2009.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

Date: 5/8/2009
Time: 10:49 am

18th Judicial District Court
Receipt

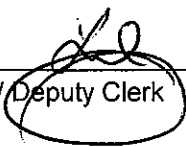
NO. 0892930
Page 1 of 1

Received of: Conco Inc (subject) \$ 14.00

Fourteen and 00/100 Dollars

Case: 2009-SB-000170-Z5	Subject: In the Matter of Conco Inc	Amount
Statutory Bond		14.00
Total:		14.00

Check: 1110726 Bank: UMB Bank, NA
Payment Method: Check
Amount Tendered: 14.00

By: 
Clerk / Deputy Clerk



Sedgwick County, Kansas

CITY OF WICHITA
455 NORTH MAIN
WICHITA KS 67202

INVOICE

Invoice No.
1800030471

Date
04/20/2010

Account
90

Send payment to:
Sedgwick County
Division of Finance
525 N. Main, Suite 823
Wichita, Kansas 67203

Phone
316-660-7591

Fax
316-383-7729

Federal ID Number
486000798
County of Sedgwick

Due Date
05/25/2010

Please include invoice number on payment.

Description	Date	Amount
Renovation of Regional Forensic Science Center	04/20/2010	125,000.00
Total		125,000.00



Sedgwick County
Division of Finance
525 N. Main, Suite 823
Wichita, Kansas 67203

City of Wichita
City Council Meeting
June 22, 2010

TO: Mayor and City Council

SUBJECT: Intelligent Transportation Systems – Network Switches (All Districts)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the payment.

Background: On January 15, 2002, the City Council approved an agreement with Sedgwick County and the Kansas Department of Transportation (KDOT) to jointly fund a program for regional Intelligent Transportation Systems (ITS) projects. One of the projects is to upgrade the existing traffic signal system. As part of this project, network connectivity between the traffic signals must be obtained. This requires network hardware, including managed network switches to monitor, regulate, and switch network traffic in each traffic cabinet.

Traffic Engineering and Traffic Maintenance staff extensively researched the available technology and determined that only the Kyland SICOM 3170 is designed to operate in the traffic detector chassis. IT/IS tested the switch and confirmed it would meet the needs of the wireless system. Accordingly, the Kyland SICOM3170 switch was selected and sole-source letter has been provided. The Kyland SICOM 3170 switch was developed, designed, and engineered in Kansas City, Missouri.

Analysis: An effective traffic signal system requires connectivity between the various portions of the network. The Kyland SICOM 3170 managed switch provides this connectivity and fits within the traffic detector chassis, eliminating the need for extra power supplies. One fewer power supply in the cabinet means less electrical consumption, no additional electrical connections, and reduced lifecycle costs. Additionally, the Kyland SICOM 3170 uses less than 8 watts of power, is RoHS certified (green in design, manufacture, and operation), and has a mean time before failure of thirty-five years.

Financial Considerations: The cost for Kyland-USA to provide four hundred fifty of the Kyland SICOM 3170 switches is \$539,550. The costs will be funded through \$226,267 in General Obligation bonds, \$5,316 from Sedgwick County under the memorandum of understanding, \$221,485 from KDOT ITS set-aside funding, \$86,482 from 2003 federal earmark funding. The cost is included in the Capital Improvement Program and is part of the ITS project approved by the City Council on September 19, 2006.

Goal Impact: This project addresses the Efficient Infrastructure goal by upgrading the City's traffic signal system

Legal Considerations: None.

Recommendations/Actions: It is recommended that the City Council designate Kyland-USA, LLC, as the sole source for the Kyland SICOM 3170 switch and authorize the payment in the amount of \$539,550.

Attachments: Sole-source letter.

March 5, 2010

[KYLAND-USA – SOLE SOURCE MANUFACTURER FOR DETECTOR
CHASSIS MANAGED INDUSTRIAL ETHERNET SWITCH]



To: Dr. Brian A. Coon
Assistant Traffic Engineer / ADA Coordinator
City Hall – 7th Floor
455 N. Main
Wichita, KS 67202

Sir:

This letter is to confirm that Kyland-USA, LLC is the sole source manufacturer of the Kyland SICOM 3170 Traffic Switch (Patent Pending). The SICOM 3170 product is part of the Kyland "Intelligent Traffic Systems" (ITS) family of products. The SICOM 3170 Traffic switch was developed, designed, and engineered in Kansas City, Missouri as a joint venture between Traffic Signal Controls and Kyland-USA. It is the only Industrial Ethernet Switch to operate within the traffic detector chassis. **The SICOM 3170 is the "Original Traffic Detector Chassis Ethernet Switch."**

The SICOM 3170 Traffic Ethernet Switch is one of a series of Ultra-Low powered traffic components designed by Kyland-USA. Our products are designed to be universal, and not lock customers into a proprietary technology, or a particular vendor. The product works in both 170 and NEMA traffic cabinet configurations due to the ranging power supply designed to achieve maximum flexibility and convenience for our customers

Kyland products are designed with the latest engineering advances and techniques to achieve superior product performance. The SICOM 3170 consumes less than 7.2 watts of power under fully loaded operating conditions. Our product is manufactured for RoHS compliance to achieve green status in its manufacture, operation and eventual disposal. The SICOM 3170 Traffic Switch is also a "Green Ethernet" certified product. The Kyland SICOM 3170 has the smallest carbon footprint of any traffic switch in its class, providing significant power savings, a longer operating lifespan and lower operational costs.

Our commitment is to you, the customer. Kyland products come with a 5 year warranty and are engineered for a 35 year mean time between failure (MTBF). We manufacture the best industrial Ethernet products in the world. Innovation and cutting edge engineering technology from Kyland-USA, means better value and performance for our customers.

Thomas J. West
Vice-President, Sales & Marketing
Kyland-USA
Email: twest@kyland-usa.com

Kyland-USA
1107 SE Willow Place
Blue Springs, MO 64014-5248

Telephone: (219) 595-2631 (219 –KYLAND1)
FAX: (480) 287-8605
Email: Sales@Kyland-USA.com

**City of Wichita
City Council Meeting
June 22, 2010**

TO: Mayor and City Council Members

SUBJECT: General Obligation Bond and Note Sale

INITIATED BY: Finance Department

AGENDA: Consent

Recommendation: Adopt the resolution.

Background: The City is planning to offer for sale one series of general obligation temporary notes in the principal amount of approximately \$64,810,000 (Series 238) and four series of general obligation bonds (Series 801, 802, 802A and 802B) in the principal amount of approximately \$34,420,000 for the purpose of providing interim and permanent financing for capital improvement projects of the City. The public sale of the bonds and notes is scheduled for 10:00 a.m. C.T. on July 20, 2010, at which time bids will be received and the City Council will award the sale of bonds and notes to the bidders whose proposed interest rates result in the lowest overall cost to the City.

Analysis: The City's Summer 2010 general obligation bond and note sale includes the following issues:

Temporary Notes

The proceeds from the sale of the Series 238 Renewal and Improvement Temporary Notes will be issued in a principal amount of approximately \$64,810,000 and will be used to provide interim financing for City-at-large, improvement district projects and public improvement projects.

General Obligation Bonds

The proceeds from the sale of the Series 801 Bonds will be used to permanently finance City-at-large and public improvement projects. The General Obligation Bonds, Series 801 will be issued in a principal amount of approximately \$21,000,000.

Special Assessment Bonds

The proceeds from the sale of the Series 802, 802A and 802B Bonds will be used to permanently finance neighborhood and façade improvements located in special improvement districts. Special assessments have been levied against the property owners in the improvement districts for the purpose of paying all or a portion of the costs of such improvements, including the payment of principal and interest on the Series 802, 802A and Series 802B Bonds. The General Obligation Bonds, Series 802 will be issued in a principal amount of approximately \$6,085,000 and the General Obligation Bonds, Series 802A will be issued in a principal amount of approximately \$6,075,000. The General Obligation Bonds, Series 802B (taxable under federal law) will be issued in a principal amount of approximately \$1,260,000.

Financial Considerations: The City of Wichita awards the sale of bonds and notes to the bidder with the lowest true interest cost, or "TIC". Using the TIC to calculate the bids, accounts for the time value of money. The TIC is the rate that will discount all future cash payments so that the sum of their present value will equal the bond proceeds. Further, using the TIC calculation can potentially result in the City saving money because TIC does not ignore the timing of interest payments.

The Series 238 Temporary Notes will mature on August 18, 2011 and will be retired using the proceeds of permanent financing bonds, renewal notes and/or cash. The Series 238 Temporary Notes will be callable February 10, 2011 at par.

The Series 801 General Obligation Bonds will mature serially over 10 and 15 years with principal maturities structured to produce level annual payments of principal and interest. The Series 801 Bonds are payable from Citywide ad valorem taxes and are callable beginning in 2015 with a 1% call premium that declines by .50% annually.

The Series 802 Special Assessment Bonds will mature serially over 15 years with principal maturities structured to produce level annual payments of principal and interest. The Series 802 Bonds are payable from the collection of special assessments levied against benefitting properties, and if not so paid, from Citywide ad valorem taxes. The Series 802 Special Assessment Bonds will be callable beginning in 2017 with a 1% call premium that declines annually by .50%.

The Series 802A Special Assessment Bonds will mature serially over 20 years with principal maturities structured to produce level annual payments of principal and interest. The Series 802B Taxable Special Assessment Bonds will mature serially over 15 and 20 years with principal maturities structured to produce level annual payments of principal and interest for each term. The Series 802A and 802B Bonds are payable from the collection of special assessments levied against benefitting properties, and if not so paid, from Citywide ad valorem taxes. The Series 802A and 802B Special Assessment Bonds will be callable beginning in 2020 with a 1% call premium that declines annually by .50%.

Goal Impact: This item impacts the Economic Vitality/Affordable Living and Internal Perspectives through the temporary and permanent financing of capital improvements and offering the City's debt obligations through competitive sale. The sale of temporary notes allows short-term financing of improvements that shall be permanently financed through the issuance of bonds or pay-as-you-go financing. The special assessment bonds are being issued on a reimbursement basis to finance project costs previously incurred.

Legal Considerations: The Law Department has approved the Resolution authorizing the sale of the bonds and notes and directing the publication and distribution of the Notice of Sale (prepared by the City's Bond Counsel).

Recommendation/Action: It is recommended the City Council adopt the resolution: 1) authorizing the general obligation bond and note sales; 2) approving the distribution to prospective bidders of the Preliminary Official Statement, subject to such minor revisions as may be determined necessary by the Director of Finance and Bond Counsel; 3) finding that such Preliminary Official Statement is in a form "deemed final" for the purpose of the Securities Exchange Commission's Rule 15c2-12(b)(1), subject to revision, amendment and completion in the final Official Statement; and, 4) authorizing publication of the Notice of Sale.

Attachments: Sales Resolution
Official Notice of Sale

RESOLUTION NO. 10-172

A RESOLUTION OF THE CITY OF WICHITA, KANSAS, AUTHORIZING AND PROVIDING FOR THE PUBLIC SALE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 238, AND GENERAL OBLIGATION BONDS, SERIES 801, SERIES 802, SERIES 802A AND SERIES 802B (TAXABLE UNDER FEDERAL LAW); AND PROVIDING FOR THE GIVING OF NOTICE OF THE PUBLIC SALE.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the “City”), has heretofore by various duly held proceedings, authorized the making of certain capital improvements in the City, and made provision for expenditures and funding sources therefore, and provided in said proceedings for the financing of the costs of said capital improvements by the issuance of general obligation bonds of the City; and

WHEREAS, the City is empowered by the provisions of K.S.A. 10-123, as amended and supplemented, to issue its temporary notes to pay the costs of capital improvements which are to be paid for in whole or in part by the issuance of bonds, and may issue renewal temporary notes to pay for the cost of taking up any previously issued temporary notes as they mature when all aspects of the capital improvements will not be completed at the maturity date of the notes or when the capital improvements are completed but the issuance of bonds therefor is prevented, hindered or delayed; and

WHEREAS, the Governing Body has authorized and issued its General Obligation Renewal and Improvement Temporary Notes, Series 234, dated March 4, 2010 (the “Series 234 Notes”), and its General Obligation Renewal and Improvement Temporary Notes, Series 236, dated March 4, 2010 (the “Series 236 Notes”); and

WHEREAS, the Governing Body has further authorized or provided for the making of certain additional capital improvements in the City and hereby finds and determines that it is necessary at this time to provide temporary financing for the costs in connection with refinancing a portion of the Series 234 Notes and the Series 236 Notes and financing such additional capital improvements by the issuance of temporary notes in an aggregate principal amount of approximately \$64,810,000 and;

WHEREAS, the Governing Body has further heretofore by various duly held proceedings, authorized or provided for the making of certain capital improvements in the City, and provided for the financing of certain costs thereof by the issuance of general obligation bonds of the City which will be payable over periods of 15 and 20 years; and the Governing Body hereby finds and determines that it is necessary at this time to provide tax-exempt financing for the costs in connection with such capital improvements in an aggregate principal amount of approximately \$21,000,000; and

WHEREAS, the Governing Body has further heretofore by various duly held proceedings, authorized or provided for the making of certain capital improvements in the City which benefit specific properties, and provided for the financing of certain costs thereof by the issuance of general obligation bonds of the City which will be payable from the collection of special assessment taxes levied against real properties benefited by said capital improvements over a period of 15 years; and the Governing Body hereby finds and determines that it is necessary at this time to provide tax-exempt financing for the costs in connection with such capital improvements in an aggregate principal amount of approximately \$6,085,000; and

WHEREAS, the Governing Body has further heretofore by various duly held proceedings, authorized or provided for the making of certain capital improvements in the City which benefit specific properties, and provided for the financing of certain costs thereof by the issuance of general obligation bonds of the City which will be payable from the collection of special assessment taxes levied against real properties benefited by said capital improvements over a period of 20 years; and the Governing Body hereby finds and determines that it is necessary at this time to provide tax-exempt financing for the costs in connection with such capital improvements in an aggregate principal amount of approximately \$6,075,000; and

WHEREAS, the Governing Body has further heretofore by various duly held proceedings, authorized or provided for the making of certain capital improvements in the City which benefit specific properties, and provided for the financing of certain costs thereof by the issuance of general obligation bonds of the City which will be payable from the collection of special assessment taxes levied against real properties benefited by said capital improvements over periods of 15 and 20 years; and the Governing Body hereby finds and determines that it is necessary at this time to provide taxable financing for the costs in connection with such capital improvements in an aggregate principal amount of approximately \$1,260,000; and

WHEREAS, the City is empowered by the provisions of K.S.A. 10-101 *et seq.*, as amended and supplemented, to issue, sell and deliver its general obligation bonds, and is required, by K.S.A. 10-106, as amended and supplemented, to sell such general obligation bonds at public sale if the principal amount therefore exceeds \$2,000,000; and

WHEREAS, the Governing Body hereby finds and determines it to be necessary at this time to authorize and provide for the public sale of the City's general obligation renewal and improvement temporary notes and general obligation bonds for the aforesaid purposes.

THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. It is hereby found and determined to be necessary and it is hereby authorized, ordered and directed that the hereinafter described general obligation renewal and improvement temporary notes (the "Notes") and the hereinafter described general obligation bonds (the "Bonds"), of the City shall be sold at public sale on Tuesday, July 20, 2010, or at such other date approved by the Mayor that is the date of a City Council meeting. Bids for the purchase of the Notes and the Bonds shall be accepted through the *PARITY* Electronic Bid Submission System until 10:00 a.m., Central Time, and will at such time be read aloud and tabulated by the City staff. The bids will be considered and the Notes and the Bonds will be awarded to the respective best bidders by the Governing Body at their earliest convenience following the deadline for receipt of the bids.

The Notes to be so sold shall be dated as of the date of their public sale, will be authorized by and issued pursuant to an ordinance to be adopted by the Governing Body immediately after the awarding of the Notes to the best bidder on the aforesaid sale date, and will be issued in the manner provided by K.S.A. 10-101 *et seq.*, as amended and supplemented, including specifically K.S.A. 10-123, as amended and supplemented. The Notes to be so sold shall be designated as General Obligation Renewal and Improvement Temporary Notes, Series 238, which shall be issued in the principal amount of approximately \$64,810,000.

The Bonds to be so sold shall be dated August 1, 2010, will be authorized by and issued pursuant to ordinances to be adopted by the Governing Body immediately after the awarding of the Bonds to the best bidders on the aforesaid sale date, and will be issued in the manner provided by K.S.A. 10-101 *et*

seq., as amended and supplemented. The Bonds to be so sold shall be designated as General Obligation Bonds, Series 801, which shall be issued in the principal amount of approximately \$21,000,000; General Obligation Bonds, Series 802, which shall be issued in the principal amount of approximately \$6,085,000; General Obligation Bonds, Series 802A, which shall be issued in the principal amount of approximately \$6,075,000; and General Obligation Bonds, Series 802B (Taxable Under Federal Law), which shall be issued in the principal amount of approximately \$1,260,000.

Section 2. It is hereby further found and determined to be necessary, and it is hereby further authorized, ordered and directed, that a Summary Notice of Bond Sale containing various recitals required by law and in such final form as shall be prepared by Kutak Rock LLP, the City's Bond Counsel ("Bond Counsel"), and approved by City staff, shall be published one time as required by law on a date which is at least six (6) but not more than thirty (30) days prior to the date of the public sale, in a newspaper of general circulation in Sedgwick County, Kansas, and in *The Kansas Register*, the official newspaper of the State of Kansas.

Section 3. It is hereby further found and determined to be necessary, and it is hereby further authorized, ordered and directed, that copies of the City's Official Notice of Sale, containing various recitals required by law and in such final form as shall be prepared by Bond Counsel and approved by City staff together with the City's Preliminary Official Statement dated June 22, 2010, shall be made available to prospective bidders for the Notes and Bonds. Said Preliminary Official Statement as prepared by Bond Counsel and City staff is hereby approved by the Governing Body, subject to such minor revisions as may be determined necessary by the Director of Finance and Bond Counsel, and the Governing Body hereby finds and determines that such Preliminary Official Statement is in a form "deemed final" for the purpose of the Securities Exchange Commission's Rule 15c2-12(b)(1), subject to revision, amendment and completion in the final Official Statement.

Section 4. City Staff, in consultation with Bond Counsel, are hereby authorized to take such further action reasonably required to implement this Resolution, including, but not limited to, providing notice of outstanding notes being redeemed and paid prior to their maturity with the proceeds of the Notes and Bonds.

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on June 22, 2010.

(Seal)

Carl Brewer, Mayor

Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

**CITY OF WICHITA, KANSAS
OFFICIAL NOTICE OF SALE**

\$21,000,000* GENERAL OBLIGATION BONDS, SERIES 801

\$6,085,000* GENERAL OBLIGATION BONDS, SERIES 802

\$6,075,000* GENERAL OBLIGATION BONDS, SERIES 802A

**\$1,260,000* GENERAL OBLIGATION BONDS, SERIES 802B
(TAXABLE UNDER FEDERAL LAW)**

**\$64,810,000* GENERAL OBLIGATION RENEWAL AND IMPROVEMENT
TEMPORARY NOTES, SERIES 238**

(General Obligation Bonds and Notes Payable from Unlimited Ad Valorem Taxes)

Date, Time and Place of Receiving Bids

Bids will be received by the Director of Finance on behalf of the Governing Body of the City of Wichita, Kansas (the "City"), via *PARITY* electronic bid submission system ("*PARITY*"), until 10:00 a.m., Central Daylight Saving Time, on: **TUESDAY, JULY 20, 2010** (the "Sale Date"), for the purchase of \$21,000,000* principal amount of General Obligation Bonds, Series 801 (the "Series 801 Bonds"); \$6,085,000* principal amount of General Obligation Bonds, Series 802 (the "Series 802 Bonds"); \$6,075,000* principal amount of General Obligation Bonds, Series 802A (the "Series 802A Bonds"); \$1,260,000* principal amount of General Obligation Bonds, Series 802B (Taxable Under Federal Law) (the "Series 802B Bonds"); and \$64,810,000* principal amount of General Obligation Renewal and Improvement Temporary Notes, Series 238 (the "Notes").

All bids shall be publicly read and tabulated on the date and at the time above indicated and all bids and the tabulations thereof shall thereafter be presented to the Governing Body of the City at their earliest convenience in the Council Chamber at City Hall. The Series 801 Bonds, the Series 802 Bonds, the Series 802A Bonds and the Series 802B Bonds are herein collectively referred to as the "Bonds." The Governing Body will thereupon award each series of the Bonds and the Notes to the respective best bidders.

Each series of Bonds and the Notes shall be sold separately, and bidders may bid on any series of Bonds or the Notes. No oral or auction bid for any series of Bonds or the Notes shall be considered, and no bid for less than the entire principal amount of the applicable series of Bonds or the Notes shall be considered.

Description of Bonds

Series 801 Bonds. The Series 801 Bonds shall be issued in the aggregate principal amount of \$21,000,000,* shall bear a Dated Date of August 1, 2010, shall be issued in book-entry-only form, and individual purchases may be made in denominations of \$5,000 or integral

*Subject to change.

multiples thereof. The Series 801 Bonds shall mature serially on December 1 in the years and principal amounts as follows:

Maturity Schedule - Series 801 Bonds

<u>Maturing December 1</u>	<u>Principal Amount</u>*	<u>Maturing December 1</u>	<u>Principal Amount</u>*
2011	\$1,520,000	2019	\$1,925,000
2012	1,565,000	2020	1,985,000
2013	1,615,000	2021	670,000
2014	1,660,000	2022	695,000
2015	1,710,000	2023	715,000
2016	1,765,000	2024	735,000
2017	1,815,000	2025	755,000
2018	1,870,000		

The Series 801 Bonds shall bear interest at the rates specified by the successful bidder, and interest shall be payable semiannually on June 1 and December 1 of each year, commencing June 1, 2011.

Series 802 Bonds. The Series 802 Bonds shall be issued in the aggregate principal amount of \$6,085,000,* shall bear a Dated Date of August 1, 2010, shall be issued in book-entry-only form, and individual purchases may be made in denominations of \$5,000 or integral multiples thereof. The Series 802 Bonds shall mature serially on December 1 in the years and principal amounts as follows:

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*Subject to change.

Maturity Schedule - Series 802 Bonds

<u>Maturing December 1</u>	<u>Principal Amount*</u>	<u>Maturing December 1</u>	<u>Principal Amount*</u>
2011	\$325,000	2019	\$415,000
2012	335,000	2020	425,000
2013	350,000	2021	440,000
2014	360,000	2022	455,000
2015	370,000	2023	465,000
2016	380,000	2024	480,000
2017	390,000	2025	495,000
2018	400,000		

The Series 802 Bonds shall bear interest at the rates specified by the successful bidder, and interest shall be payable semiannually on June 1 and December 1 of each year, commencing June 1, 2011.

Series 802A Bonds. The Series 802A Bonds shall be issued in the aggregate principal amount of \$6,075,000,* shall bear a Dated Date of August 1, 2010, shall be issued in book-entry-only form, and individual purchases may be made in denominations of \$5,000 or integral multiples thereof. The Series 802A Bonds shall mature serially on December 1 in the years and principal amounts as follows:

Maturity Schedule - Series 802A Bonds

<u>Maturing December 1</u>	<u>Principal Amount*</u>	<u>Maturing December 1</u>	<u>Principal Amount*</u>
2011	\$225,000	2021	\$305,000
2012	235,000	2022	315,000
2013	240,000	2023	320,000
2014	245,000	2024	330,000
2015	255,000	2025	340,000
2016	265,000	2026	350,000
2017	270,000	2027	365,000
2018	280,000	2028	375,000
2019	285,000	2029	385,000
2020	295,000	2030	395,000

The Series 802A Bonds shall bear interest at the rates specified by the successful bidder, and interest shall be payable semiannually on June 1 and December 1 of each year, commencing June 1, 2011.

Series 802B Bonds. The Series 802B Bonds shall be issued in the aggregate principal amount of \$1,260,000,* shall bear a Dated Date of August 1, 2010, shall be issued in book-entry-only form, and individual purchases may be made in denominations of \$5,000 or integral

*Subject to change.

multiples thereof. The Series 802B Bonds shall mature serially on December 1 in the years and principal amounts as follows:

Maturity Schedule - Series 802B Bonds (Taxable Under Federal Law)

<u>Maturing December 1</u>	<u>Principal Amount*</u>	<u>Maturing December 1</u>	<u>Principal Amount*</u>
2011	\$65,000	2021	\$85,000
2012	65,000	2022	90,000
2013	65,000	2023	90,000
2014	70,000	2024	95,000
2015	70,000	2025	95,000
2016	75,000	2026	15,000
2017	75,000	2027	15,000
2018	80,000	2028	15,000
2019	80,000	2029	15,000
2020	80,000	2030	15,000

The Series 802B Bonds shall bear interest at the rates specified by the successful bidder, and interest shall be payable semiannually on June 1 and December 1 of each year, commencing June 1, 2011.

Principal Amounts Subject to Change. The City reserves the right to increase or decrease the total principal amount of any series of Bonds and the principal amount of any maturity in order to properly size a Bond issue including adjustments based on net bond proceeds received by the City as a result of any premium bid. Adjustments, if required, will be made proportionately to each maturity as permitted by the authorized denominations of such series of Bonds. The successful bidder may not withdraw its bid or change the interest rates bid as a result of any changes made to the principal amount of a series of Bonds as described. If there is an adjustment in the final aggregate principal amount of a series of Bonds or the schedule of principal payments as described above, any premium bid on such series of Bonds will be proportionately adjusted. At the request of the City, each successful bidder agrees to resize the Bond issue, adjust the premium and provide a revised maturity schedule to the City promptly after receipt of notification of such a request by the City.

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*Subject to change.

Redemption of Bonds

Series 801 Bonds. The Series 801 Bonds maturing in the years 2011 through 2015, inclusive, shall become due on their stated maturity dates without the option of prior payment. At the option of the City, the Series 801 Bonds maturing December 1, 2016, and thereafter, may be called for redemption and payment prior to their respective maturities on and after December 1, 2015, in whole or in part at any time. Series 801 Bonds called for redemption and payment shall be redeemed at a price (expressed as a percentage of the principal amount) as follows, plus accrued interest to the date established for redemption and payment:

<u>Redemption Dates</u> <u>(Inclusive)</u>	<u>Redemption</u> <u>Prices</u>
December 1, 2015, through November 30, 2016	101.00%
December 1, 2016, through November 30, 2017	100.50%
December 1, 2017, and thereafter	100.00%

Series 802 Bonds. The Series 802 Bonds maturing in the years 2011 through 2017, inclusive, shall become due on their stated maturity dates without the option of prior payment. At the option of the City, the Series 802 Bonds maturing December 1, 2018, and thereafter, may be called for redemption and payment prior to their respective maturities on and after December 1, 2017, in whole or in part at any time. Series 802 Bonds called for redemption and payment shall be redeemed at a price (expressed as a percentage of the principal amount) as follows, plus accrued interest to the date established for redemption and payment:

<u>Redemption Dates</u> <u>(Inclusive)</u>	<u>Redemption</u> <u>Prices</u>
December 1, 2017, through November 30, 2018	101.00%
December 1, 2018, through November 30, 2019	100.50%
December 1, 2019, and thereafter	100.00%

Series 802A Bonds. The Series 802A Bonds maturing in the years 2011 through 2020, inclusive, shall become due on their stated maturity dates without the option of prior payment. At the option of the City, the Series 802A Bonds maturing December 1, 2021, and thereafter, may be called for redemption and payment prior to their respective maturities on and after December 1, 2020, in whole or in part at any time. Series 802A Bonds called for redemption and payment shall be redeemed at a price (expressed as a percentage of the principal amount) as follows, plus accrued interest to the date established for redemption and payment:

<u>Redemption Dates</u> <u>(Inclusive)</u>	<u>Redemption</u> <u>Prices</u>
December 1, 2020, through November 30, 2021	101.00%
December 1, 2021, through November 30, 2022	100.50%
December 1, 2022, and thereafter	100.00%

Series 802B Bonds. The Series 802B Bonds maturing in the years 2011 through 2020, inclusive, shall become due on their stated maturity dates without the option of prior payment. At the option of the City, the Series 802B Bonds maturing December 1, 2021, and thereafter, may be called for redemption and payment prior to their respective maturities on and after December 1, 2020, in whole or in part at any time. Series 802B Bonds called for redemption and payment shall be redeemed at a price (expressed as a percentage of the principal amount) as follows, plus accrued interest to the date established for redemption and payment:

<u>Redemption Dates</u> <u>(Inclusive)</u>	<u>Redemption</u> <u>Prices</u>
December 1, 2020, through November 30, 2021	101.00%
December 1, 2021, through November 30, 2022	100.50%
December 1, 2022, and thereafter	100.00%

General Redemption Provisions. If less than all of a series of outstanding Bonds are called for redemption on a specified date, the method of selection of the Bonds to be called shall be designated by the City in such equitable manner as it may determine. In the case of Bonds registered in denominations greater than \$5,000, the City shall treat each \$5,000 of face value as though it were a separate Bond in the denomination of \$5,000.

Written notice of any call for redemption and payment of the Bonds shall be given by the Paying Agent by United States first class mail, not less than 30 days prior to the date established for such redemption and payment, to the Registered Owners of the Bonds called for redemption and payment as shown by the Registration Books maintained by the Bond Registrar.

Paying Agent and Bond Registrar

The Treasurer of the State of Kansas, Topeka, Kansas, has been designated as Paying Agent and Bond Registrar for the Bonds (hereinafter called the “Paying Agent”). The fees of the Paying Agent for the registration, transfer, exchange, payment and redemption, if any, of the Bonds shall be paid by the City. The City shall also pay for the printing of a reasonable supply of blank registered bond certificates for such purpose. Any additional costs or fees that might be incurred in the secondary market, except the fees of the Paying Agent, shall be the responsibility of the Registered Owners of the Bonds.

Payment of Principal and Interest on Bonds; Ownership Registration

One certificate representing the entire principal amount of each maturity of each series of the Bonds will be issued to The Depository Trust Company, New York, New York (hereafter called “DTC”), registered in the name of Cede & Co. (DTC’s nominee), and will be immobilized in the custody of DTC. A book-entry-only system of issuance will be employed, evidencing ownership of the Bonds in the permitted \$5,000 denominations, with transfers of ownership effected on the records of DTC and its Direct Participants pursuant to the rules and procedures established by DTC and its participants. Principal and interest on the Bonds will be paid in same-day funds to DTC or its nominee as the Registered Owner of the Bonds. DTC’s practice is to credit Direct Participants’ accounts on the payable date. Payments by Direct Participants to

Beneficial Owners will be governed by standing instructions and customary practices. The City will not be responsible or liable for maintaining, supervising or reviewing the records maintained by DTC, its participants or persons acting through such participants. Reference is made to the Preliminary Official Statement for further information regarding the book-entry-only issuance of the Bonds.

Description of Notes

Series 238 Notes. The General Obligation Renewal and Improvement Temporary Notes, Series 238, shall be issued in the principal amount of \$64,810,000,* shall bear a Dated Date of August 19, 2010, and a Maturity Date of August 18, 2011, shall be issued in book-entry-only form, and individual purchases may be made in denominations of \$5,000 or integral multiples thereof. The Notes shall bear interest from the Dated Date at the rate which shall be determined upon the public sale of the Notes, and said interest shall be payable on the Maturity Date.

Principal Amounts Subject to Change. The City reserves the right to increase or decrease the total principal amount of the Notes based on net note proceeds received by the City in order to properly size the Note issue including adjustment resulting from any premium bid. The successful bidder may not withdraw its bid or change the interest rate bid as a result of any changes made to the principal amount of the Notes as described. If there is an adjustment in the final aggregate principal amount of the Notes or the schedule of principal payments as described above, any premium bid on the Notes will be proportionately adjusted.

Redemption of Notes

The Notes may each be called for redemption and payment prior to their respective maturities on and after February 10, 2011, in whole or in part at anytime. Notes called for redemption and payment shall be redeemed at a price of 100% of the principal amount thereof, plus accrued interest to the date established for redemption and payment.

If less than all of the outstanding Notes are called for redemption on a specified date, the method of selection of the Notes to be called shall be designated by the City in such equitable manner as it may determine. In the case of Notes registered in denominations greater than \$5,000, the City shall treat each \$5,000 of face value as though it were a separate Note in the denomination of \$5,000.

Written notice of any call for redemption and payment of the Notes shall be given by the Paying Agent by United States first class mail, not less than 30 days prior to the date established for such redemption and payment, to the Registered Owners of the Notes called for redemption and payment as shown by the Registration Books maintained by the Bond Registrar.

Payment of Principal and Interest on Notes; Ownership Registration

One certificate representing the entire principal amount of the Notes will be issued to The Depository Trust Company, New York, New York (hereafter called "DTC"), registered in the name of Cede & Co. (DTC's partnership nominee,) and will be immobilized in the custody of

Subject to change.

DTC. A book-entry-only system of issuance will be employed, evidencing ownership of the Notes in the hereinbefore stated permitted denominations, with transfers of ownership effected on the records of DTC and its Direct Participants pursuant to the rules and procedures established by DTC and its participants. Principal and interest on the Notes will be paid in same-day funds to DTC or its nominee as the Registered Owner of the Notes. DTC's practice is to credit Direct Participants' accounts on the payable date. Payments by Direct Participants to Beneficial Owners will be governed by standing instructions and customary practices. The City will not be responsible or liable for maintaining, supervising or reviewing the records maintained by DTC, its participants or persons acting through such participants. Reference is made to the Preliminary Official Statement for further information regarding the book-entry-only issuance of the Notes.

Paying Agent and Note Registrar

The Treasurer of the State of Kansas, Topeka, Kansas, has been designated as Paying Agent and Note Registrar for the Notes (hereinafter called the "Paying Agent"). The fees of the Paying Agent for the registration, transfer, exchange, payment and redemption, if any, of the Notes shall be paid by the City. The City shall also pay for the printing of a reasonable supply of blank registered note certificates for such purpose. Any additional costs or fees that might be incurred in the secondary market, except the fees of the Paying Agent, shall be the responsibility of the Registered Owners of the Notes.

Conditions of Bidding

Individual proposals for the purchase of each series of Bonds and/or the Notes shall be received bearing such rate or rates of interest as may be specified by the bidder, subject to the conditions of this paragraph. Only a single rate of interest for the Notes may be specified by the bidder. The same rate of interest shall apply to all Bonds of the same series having the same maturity date. Each interest rate specified shall be in an even multiple of 1/8th or 1/20th of 1%. *No interest rate specified for a maturity for a series of Bonds may be less than the interest rate specified for any prior maturity for such series of Bonds unless the interest rate bid for any maturity is not more than 1% lower than the highest interest rate specified for any preceding maturity for such series of Bonds.* The maximum stated rate of interest on any Series 802B Bond shall not exceed the daily yield for the ten-year treasury bonds published by *The Bond Buyer*, in New York, New York, on the Monday next preceding the date of the public sale, plus 7%. The maximum stated rate of interest on any Series 801 Bond, any Series 802 Bond, any Series 802A Bond, the Notes shall not exceed the daily yield for the ten-year treasury bonds published by *The Bond Buyer*, in New York, New York, on the Monday next preceding the date of the public sale, plus 6%. No bid for less than par value, plus accrued interest thereon from the Dated Date to the date of delivery, shall be considered, and no supplemental interest payments shall be authorized. Each bid must state (i) the total interest cost to the City during the life of the applicable series of Bonds or the Notes on the basis of the bid, (ii) the premium, if any, offered by the bidder, (iii) the net interest cost to the City on the basis of the bid, and (iv) the true interest cost (as hereinafter defined) on the basis of such bid. Each bid shall be certified by the bidder to be correct, and the Governing Body of the City shall be entitled to rely on such certificate of correctness.

Form and Submission of Bid; Good Faith Deposit

Bids must be submitted through the *PARITY* Electronic Bid Submission System (“*PARITY*”). To the extent any instructions or directions set forth in *PARITY* conflict with the Official Notice of Sale, the terms of the Official Notice of Sale shall control. All bids must be received by the undersigned prior to 10:00 a.m., Central Daylight Saving Time (the “Submittal Hour”) on July 20, 2010 (the “Sale Date”), accompanied by the applicable good faith deposit described below, which may be submitted separately, provided such good faith deposit is received by the City prior to the Submittal Hour on the Sale Date. The City shall not be responsible for any failure, misdirection or error in the means of transmission via *PARITY*. Bids submitted in accordance with this section and accepted by the City as provided below shall be binding obligations of the bidders. For further information about the electronic bidding services of *PARITY*, potential bidders may contact Ipreo, 1359 Broadway, 2nd Floor, New York, NY 10010, (212) 849-5021.

Good Faith Deposit

Each bid for the Bonds shall be accompanied by a good faith deposit in an amount equal to 2% of the principal amount of the series of Bonds for which the bid is submitted (\$420,000 for the Series 801 Bonds, \$121,700 for the Series 802 Bonds, \$121,500 for the Series 802A Bonds and \$25,200 for the Series 802B Bonds), and each bid for the Notes shall be accompanied by a good faith deposit in an amount equal to 2% of the principal amount of the series of Notes for which the bid is submitted (\$1,296,200 for the Notes). The good faith deposit must be in the form of (1) a certified or cashier's check drawn on a bank located in the United States of America, payable to the order of the City, (2) a Financial Surety Bond (as described below) payable to the order of the City or (3) a wire of Federal Reserve funds (as described below), immediately available for use by the City. If a bid is accepted, such good faith deposit shall be deposited by the City until the bidder shall have complied with all of the terms and conditions of this Notice and of its bid. In the event a bidder whose bid is accepted shall default in the performance of any of the terms and conditions of this Notice or of its bid, said bidder's good faith deposit shall be retained by the City for liquidated damages. If a bid is accepted, but the City shall fail to deliver the applicable Bonds or Notes to the bidder in accordance with the terms and conditions hereof, said good faith deposit amount shall be returned to the bidder. No interest shall be paid upon the successful bidder's good faith deposit. Checks representing the good faith deposit accompanying the bids of the unsuccessful bidders shall be promptly returned.

Certified or Cashier's Check Received By 10:00 a.m. If a certified or cashier's check is used for the good faith deposit, it must be received by the City by 10:00 a.m. Central Daylight Saving Time on the Sale Date by delivery to Ms. Catherine Gilley, Debt Coordinator, Department of Finance, Twelfth Floor, City Hall, 455 North Main, Wichita, Kansas 67202-1679.

Financial Surety Bond Received By 10:00 a.m. If a Financial Surety Bond is used for the good faith deposit, it must be from an insurance company licensed to issue such surety bond in the State of Kansas. Such surety bond must be submitted to the Director of Finance prior to the time that bids for the purchase of the applicable series of Bonds or the Notes will be received. The Financial Surety Bond must identify each bidder whose

good faith deposit is guaranteed by such Financial Surety Bond. If a series of Bonds or the Notes is awarded to a bidder using a Financial Surety Bond, then that bidder is required to submit its good faith deposit to the City in the form of a certified or cashier's check or wire transfer as instructed by the Director of Finance not later than 2:00 p.m., Central Daylight Saving Time, on the next business day following the award of the applicable series of Bonds or the Notes. If such check or wire transfer is not received by that time, the Financial Surety Bond will be drawn by the City to satisfy the good faith deposit requirement.

Wire Transfer Received By 9:30 a.m. If a wire transfer of the good faith deposit is used, the wire transfer shall reference the applicable series of Bonds or the Notes and shall be sent to the City for receipt by 9:30 a.m. on the sale date. Wire transfer instructions may be obtained by contacting:

Catherine Gilley
Debt Coordinator
455 North Main – 12th Floor
Wichita, Kansas 67202
316/268-4143
cgilley@wichita.gov

If a wire transfer of the good faith deposit is used, the wire transfer identification information shall reference the applicable series of Bonds or the Notes by including the following information which shall be completed by the bidder with the applicable series designation

Ref: City of Wichita, Kansas Good Faith Deposit, Series _____
[fill in appropriate Series designation]

Contemporaneously with such wire transfer, each bidder shall send an e-mail to cgilley@wichita.gov and shenning@wichita.gov including the following information: (i) indication that a wire transfer has been made; (ii) the amount of the wire transfer; (iii) the wire transfer federal reference number; (iv) the issue to which it applies; (v) the return wire instructions if such bidder is not awarded the applicable series of Bonds or the Notes to which the wire transfer applies and (vi) the name of the bidder for which the wire transfer is to be credited as a good faith deposit.

Awarding of Bonds and Notes

Each series of Bonds and the Notes will be sold separately and each will be awarded to the responsible bidder offering to pay not less than the par amount of applicable series of Bonds or the Notes and accrued interest thereon and specifying a rate or rates of interest that result in the lowest effective interest rate to the City. The effective interest rate to the City shall be the interest rate per annum determined on a per annum true interest cost ("TIC") basis by discounting the scheduled semiannual debt service payments of the City on the applicable series of Bonds or the Notes (based on such rate or rates of interest so bid), to the Dated Date of such

Bonds or Notes (based on a 360-day year), compounded semiannually and to the bid price, excluding accrued interest to the date of delivery. The City reserves the right to verify each bidder's calculation of TIC, and the award shall be made to the bidder whose proposal results in the lowest TIC calculated in accordance with the provisions of this Notice. If two or more identical bids for the lowest TIC are received, the Governing Body shall determine which bid, if any, shall be accepted, and such determination shall be final. The Governing Body reserves the right to reject any and/or all bids, and to waive any irregularities in any bid submitted.

Ratings

The City's outstanding general obligation bonds are rated "Aa1" by Moody's Investors Service, Inc. ("Moody's") under its recalibrated global rating scale and "AA+" by Standard & Poor's, a division of the McGraw-Hill Companies ("S&P"). The rating of the City's general obligation bonds by Moody's prior to its recalibration was "Aa2." Moody's has indicated that market participants should not view the recalibration of municipal ratings as rating upgrades, but rather as a recalibration of the ratings to a different rating scale. This recalibration does not reflect an improvement in credit quality or a change in Moody's credit opinion for rated municipal debt issuers. For further details regarding the recalibration please visit www.moody.com/gsr.

The City's general obligation notes are rated "MIG 1" by Moody's and "SP-1+" by S&P. The City has applied to both Moody's and S&P for ratings on the Bonds and Notes described herein.

Bond Insurance

The City has not applied for any policy of municipal bond insurance with respect to the Bonds or Notes and will not pay the premium in connection with any policy of municipal bond insurance desired by the successful bidder. In the event a bidder desires to purchase and pay all costs associated with the issuance of a policy of municipal bond insurance in connection with any series of the Bonds or the Notes, such intent must be specified on the bid and the bid must be accompanied by a commitment from the selected insurer specifying all terms and conditions to which the City will be required to agree in connection with the issuance of such insurance policy. Such commitment shall be delivered to the office of the Department of Finance, located on the Twelfth Floor of City Hall, 455 North Main, Wichita, Kansas 67202-1679. The Governing Body specifically reserves the right to reject any bid specifying municipal bond insurance, even though such bid may result in the lowest true interest cost to the City.

CUSIP Identification Numbers

The CUSIP Service Bureau will be requested to assign CUSIP identification numbers to the Bonds and Notes, and such numbers shall be printed on the Bonds and Notes; however, neither the failure to assign any such number to or print any such number on any Bond or Note, nor any error with respect thereto, shall constitute cause for the failure or refusal by the successful bidder to accept delivery of and to make payment for the Bonds or Notes in accordance with the terms of this Notice and of its bid. All expenses in relation to the printing of

the CUSIP numbers and the expenses of the CUSIP Service Bureau for the assignment thereof shall be the responsibility of and shall be paid for by the City.

Delivery of and Payment for Bonds

A single Bond per maturity, duly printed or typewritten, executed and registered in conformity with the laws of the State of Kansas, shall be furnished and delivered at the expense of the City to the successful bidder of each series of Bonds on or about August 19, 2010, by deposit of such Bonds with DTC. Payment for each series of Bonds shall be received by 12:00 noon, Central Daylight Saving Time, on the delivery date, in Federal Reserve funds immediately available for use by the City.

The successful bidder(s) shall be furnished with a certified Transcript of Proceedings evidencing the authorization and issuance of the applicable series of Bonds, and the usual closing proofs, which shall include a Certificate that there is no litigation pending or threatened at the time of the delivery of such series of Bonds affecting their validity and also regarding the completeness and accuracy of the Official Statement.

Delivery of and Payment for Notes

A single Note, duly printed or typewritten, executed, registered and countersigned in conformity with the laws of the State of Kansas, shall be furnished and delivered at the expense of the City to the successful bidder(s) of the Notes on or about August 19, 2010, by deposit of such Notes with DTC. Payment for the Notes shall be received by 12:00 noon, Central Daylight Saving Time, on the delivery date, in Federal Reserve funds immediately available for use by the City.

The successful bidder(s) shall be furnished with a certified Transcript of Proceedings evidencing the authorization and issuance of the Notes, and the usual closing proofs, which shall include a Certificate that there is no litigation pending or threatened at the time of the delivery of the Notes affecting their validity and also regarding the completeness and accuracy of the Official Statement.

Official Statement

The Governing Body of the City has authorized and directed the preparation of a Preliminary Official Statement in connection with the issuance of the Bonds and Notes, copies of which may be obtained from the City's Department of Finance. The Preliminary Official Statement is in a form "deemed final" by the Governing Body for the purpose of the Securities Exchange Commission's Rule 15c2-12(b)(1), but is subject to revision, amendment and completion in the final Official Statement. Authorization is hereby given to redistribute this Official Notice of Sale and the Preliminary Official Statement, but this entire Official Notice of Sale and the entire Preliminary Official Statement, and not portions thereof, must be redistributed.

By awarding the Bonds or Notes to any bidder or bidding syndicate submitting a proposal therefor, the Governing Body agrees that, no more than seven business days after the date of

such award, it shall provide without cost to the senior managing underwriter of the syndicate to which such Bonds or Notes are awarded, a reasonable number of copies of the final Official Statement. The City designates the senior managing underwriter of any syndicate to which such Bonds or Notes are awarded as agent for purposes of distributing copies of the final Official Statement to each participating underwriter. Any bidder delivering a proposal with respect to the Bonds or Notes agrees thereby that if such proposal is accepted (i) it shall accept such designation, and (ii) it shall enter into a contractual relationship with all participating underwriters of the applicable series of Bonds or the Notes for purposes of assuring the receipt by each such participating underwriter of the final Official Statement. Copies of the final Official Statement in excess of a reasonable number may be ordered by the successful bidder at its expense.

Continuing Disclosure

The City will agree in the resolution of the City prescribing the terms of the Bonds and Notes to enter into an undertaking (the "Undertaking") for the benefit of the holders of the applicable series of Bonds and the Notes to send to the Municipal Securities Rulemaking Board (the "MSRB") through the Electronic Municipal Market Access facility, or other applicable entity as required or permitted under Securities and Exchange Commission Rule 15c2-12 (the "Rule"), certain financial information and operating data annually and to provide notice to the MSRB of certain events, pursuant to the requirements of the Rule.

Authority, Purpose and Security

The Bonds and Notes shall be issued under the authority of and pursuant to the provisions of the Constitution and laws of the State of Kansas, including K.S.A. 10-101 *et seq.*, as amended and supplemented, including specifically, with reference to the Notes, K.S.A. 10-123, as amended and supplemented. The Bonds and Notes shall be authorized by Ordinances to be adopted by the Governing Body. The Bonds and Notes and the interest thereon shall constitute general obligations of the City, and the full faith, credit and resources of the City will be pledged by the aforesaid Ordinances to the payment thereof. Reference is made to the City's Official Statement for a more extensive discussion of security for the Bonds and Notes.

Legal Opinion

All matters relating to the authorization and issuance of the Bonds and the Notes are subject to the approving opinion of Kutak Rock LLP, Kansas City, Missouri, Bond Counsel. Bond Counsel's opinion shall be furnished without expense to the successful bidder(s) concurrently with delivery of the Bonds and the Notes. All fees and expenses of Bond Counsel shall be paid by the City.

Tax Exemption

Exemption from State Tax. The interest on the Bonds and the Notes is excludable from the computation of Kansas adjusted gross income and the Bonds and the Notes are exempt from the tax imposed by Kansas counties, cities or townships upon the gross earnings derived from money, notes and other evidence of debt.

Exemption from Federal Tax – Series 801, 802 and 802A Bonds and the Notes. In the opinion of Kutak Rock LLP, Bond Counsel, under existing laws, regulations, rulings and judicial decisions, interest on the Series 801 Bonds, the Series 802 Bonds, the Series 802A Bonds and the Notes (collectively, the “Obligations”) is excluded from gross income for federal income tax purposes except as described herein. Bond Counsel is further of the opinion that interest on the Obligations is not a specific preference item for purposes of the federal alternative minimum tax and is not included in adjusted current earnings when calculating the federal alternative minimum taxable income for corporations. The opinion described in the preceding sentence assumes compliance by the City with covenants designed to satisfy the requirements of the Code that must be met subsequent to the issuance of the Obligations. Failure to comply with such requirements could cause interest on the applicable series of Obligations to be included in gross income for federal income tax purposes retroactive to the date of issuance of such Obligations, as applicable. The City has covenanted to comply with such requirements. Bond Counsel has expressed no opinion with respect to the exclusion of interest from gross income for federal income tax purposes on any Notes for any period during which such Note is held by a person who is a “substantial user” of certain airport improvements financed with proceeds of the Notes pursuant to Section 142(a)(1) of the Code or a “related person” to such substantial user within the meaning of Section 147(a) of the Code or regarding other federal tax consequences arising with respect to the Obligations.

The accrual or receipt of interest on the Obligations may otherwise affect the federal income tax liability of the owners of the Obligations. The extent of these other tax consequences will depend upon such owner’s particular tax status and other items of income or deduction. Bond Counsel has expressed no opinion regarding any such consequences. Purchasers of the Obligations, particularly purchasers that are corporations (including S corporations and foreign corporations operating branches in the United States), property or casualty insurance companies, banks, thrifts or other financial institutions, certain recipients of social security or railroad retirement benefits, taxpayers otherwise entitled to claim the earned income credit, or taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry obligations, should consult their tax advisors as to the tax consequences of purchasing or owning the applicable series of Obligations.

Not Exempt from Federal Tax – Series 802B Bonds. In the opinion of Kutak Rock, LLP, Bond Counsel, interest on the Series 802B Bonds is subject to federal income taxation, and Bond Counsel expresses no opinion regarding other federal tax consequences arising with respect to the Series 802B Bonds.

Not Bank-Qualified Obligations. The City has not designated the Bonds or the Notes as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code relating to the ability of financial institutions to deduct from income for federal income tax purposes, interest expense that is allocable to carrying and acquiring tax-exempt obligations.

Backup Withholding. As a result of the enactment of the Tax Increase Prevention and Reconciliation Act of 2005, interest on tax-exempt obligations such as the Obligations is subject to information reporting in a manner similar to interest paid on taxable obligations. Backup withholding may be imposed on payments made after March 31, 2007, to any bond or note holder who fails to provide certain required information including an accurate taxpayer identification

number to any person required to collect such information pursuant to Section 6049 of the Code. The reporting requirement does not in and of itself affect or alter the excludability of interest on the Obligations from gross income for federal income tax purposes or any other federal tax consequence of purchasing, holding or selling tax-exempt obligations.

Original Purchaser's Certificate

Bond Counsel will prepare and furnish for execution to the successful bidder for each series of Bonds and the Notes, an Original Purchaser's Certificate which states that such Original Purchaser reasonably expects at least 10% of each maturity for such Bonds or Notes to be sold to the public (excluding bond houses, brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers) at initial reoffering prices to the public as shall be provided by the Original Purchaser thereof.

Assessed Valuation; Bonded Indebtedness

The City's equalized assessed tangible valuation for computation of bonded debt limitations is \$3,548,356,425. The total outstanding general obligation bonded indebtedness of the City as of August 1, 2010, including the Bonds and Notes is \$684,690,862. The City's Series 232 Notes, outstanding in the principal amount of \$240,000, Series 234 Notes, outstanding in the principal amount of \$70,820,000, and \$4,090,000 principal amount of the Series 236 Notes, outstanding in the principal amount of \$7,705,000, will be retired on August 19, 2010, from a portion of the proceeds of the Bonds, the Notes and other available funds of the City

Additional Information

Additional information regarding the Bonds and Notes may be obtained from the Department of Finance, Twelfth Floor, City Hall, 455 North Main, Wichita, Kansas 67202-1679 (Ms. Catherine Gilley, Debt Coordinator, Telephone 316/268-4143, E-mail: cgilley@wichita.gov). To obtain a Preliminary Official Statement visit www.onlinemuni.com.

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**BY ORDER OF THE GOVERNING BODY OF THE CITY OF WICHITA,
KANSAS, ON JUNE 22, 2010.**

By: /s/ Carl Brewer, Mayor
Carl Brewer, Mayor

(Seal)

ATTEST:

By: /s/ Karen Sublett, City Clerk
Karen Sublett, City Clerk

Second Reading Ordinances for June 22, 2010 (first read on June 15, 2010)

Bicycle Ordinances.

ORDINANCE NO. 48-754

An ordinance amending sections 11.48.010, 11.48.100, 11.48.120, 11.48.130, 11.48.170, 11.48.175, and 11.48.180, and repealing sections 11.48.020, 11.48.030, 11.48.040, 11.48.050, 11.48.060, 11.48.070, 11.48.080, 11.48.110 and 11.48.190 of the code of the City of Wichita, Kansas, pertaining to licensing of and traffic rules governing bicycles.

Nuisance Abatement Assessments.

ORDINANCE NO. 48-755

An ordinance making a special assessment to pay for the cost of cutting weeds in the City of Wichita, Kansas.

ORDINANCE NO. 48-756

An ordinance making a special assessment to pay for the cost of abating certain public health nuisances (lot clean up) under the provision of section 7.40.050 of the code of the City of Wichita, Kansas. Be it ordained by the governing body of the City of Wichita, Kansas.

Amendments to Chapter 3.11 of the Code of the City of Wichita, relating to Community Events.

ORDINANCE NO. 48-757

An ordinance amending sections 3.11.020, 3.11.040, 3.11.050, 3.11.060, 3.11.065, 3.11.070, 3.11.080, 3.11.090, 3.11.110, 3.11.150, 3.11.210 and 10.04.130; creating section 3.11.035 of the code of the City of Wichita, Kansas, pertaining to community events and obstructing streets and sidewalks and repealing the originals of sections 3.11.020, 3.11.040, 3.11.050, 3.11.060, 3.11.065, 3.11.070, 3.11.080, 3.11.090, 3.11.110, 3.11.150, 3.11.210 and 10.4.130 of the code of the City of Wichita, Kansas.

Ordinance Amending Sections 3.49.020, 3.49.030 and 11.97.060, pertaining to Emergency Wrecker Services.

ORDINANCE NO. 48-758

An ordinance amending sections 3.49.020, 3.49.030 and 11.97.060 of the code of the City of Wichita, Kansas, pertaining to wrecker services, towing and impound and repealing the original of said sections.

ZON2010-00013 City amendment to Protective Overlays #63, 70, 113, and 117 on properties zoned LC Limited Commercial (“LC”) ; generally located between Ridge Road and Summitlawn Drive, south of Maple Street. (District V)

ORDINANCE NO. 48-747

An ordinance changing the zoning classifications or districts of certain lands located in the City of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by section 28.04.010, as amended.

ORDINANCE NO. 48-748

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by section 28.04.010, as amended.

ORDINANCE NO. 48-749

An ordinance changing the zoning classifications or districts of certain lands located in the City of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by section 28.04.010, as amended.

ORDINANCE NO. 48-750

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by section 28.04.010, as amended.

Water and Sewer Utility Rate Increase, July 1, 2010.

ORDINANCE NO.48-759

An ordinance amending Section 17.12.090 of the code of the City of Wichita, Kansas, pertaining to schedule of rates and charges for water service, and repealing the original of said section.

ORDINANCE NO. 48-760

An ordinance amending Section 17.12.090 of the code of the City of Wichita, Kansas, pertaining to schedule of rates and charges for water service, and repealing the original of said section.

ORDINANCE NO. 48-761

An ordinance amending Section 16.14.040 of the code of the City of Wichita, Kansas, relating to the schedule of rates for users of the sanitary sewer system, and repealing the original of said section.

ORDINANCE NO. 48-762

An ordinance amending Section 16.14.040 of the code of the City of Wichita, Kansas, relating to the schedule of rates for users of the sanitary sewer system, and repealing the original of said section.